

### Previous References

1930-3/  
Leci ✓

File No. *89-3*  
Serial Nos. *1-5*

### Later References

Ch 49-32-1-4  
n 441-33-1

123

General and Revenue Secretariat.

Serial Nos. 716

**Part B for** *Dec 1980*

SUBJECT.

SUBJECT.

Report of Mr. Gustav Burgenen & Dr.  
Hedrao Hiphkum on the  
relations between the  
the two kind procedure have

5 b. Sir Arthur. Fort Belvoir N.B. & P.  
No. 35538 27.12.30

States that it is not at present  
willing to go beyond what has  
been done in the matter & that it  
has been referred to the H. C. to  
take such action as they consider  
expedient.

Dr. R. M. L. L. L.

N<sup>o</sup>. 1192

31st October 1930.

Dear Sir Charles,

1) Many thanks for the copy of Mr. Curgenvven's report on the subject of imprisonment for debt sent with your D.O. letter No. 21 dated 29th October 1930.

I note that copy of Mr. Curgenvven's personal letter to yourself is meant only for my perusal and I shall accordingly treat it as confidential.

I propose to take an early opportunity of consulting the Chief Justice in the matter.

Yours sincerely,

(sd.) M. N. Krishna Rau.

TO

Sir Charles Todhunter, K.C.S.I.,  
Private Secretary to His Highness the Maharaja of Mysore.

1194

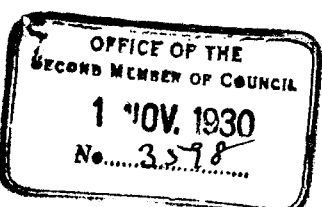
file

2)

Forwarded to the Law Secretary with compliments.

This may be submitted to Second Member and the Chief Justice consulted on obtaining his orders.

472/Q



2nd Member

3)

Draft to the Regt  
is put up for appb

Mur

3/10/30

R. M.  
1/11

11/11/30  
J. S. S.  
R. M.

2773

App. F. III-2]

General and Revenue  
Secretariat

File No.

of 193

Serial  
No.

D.O. No. 473 dated 1<sup>st</sup> Nov<sup>r</sup> to the Registrar, <sup>P</sup> High Court, stating that Govt would be glad to have the opinion of the Chief Justice in the matter

Letter No. 141/30-31 dated 25<sup>th</sup> Nov<sup>r</sup> from the Reg<sup>r</sup>. High Ct, forwarding ~~a note~~ the opinion of the Chief Justice

5) The opinion of the Chief Justice is put up

clauses (4) & (5) of O. 21-R. 39 follow the clauses in B. India, except Madras where they are slightly different.

As in cl: (5) in R. 40 some additions have been made in Madras as cl: (5A) & (6) as printed out by the Ch: J

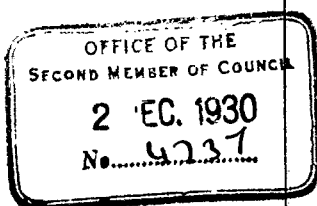
6) As regards the Motor Insurance Act of 1920, all the changes contained therein have been adopted in the Reg<sup>r</sup> XI of 1924.

It appears to me that we need not take any action in the matter.  
7) A reply may perhaps be sent to the effect that the go<sup>vt</sup> has been placed before the Chief Justice for consideration.

2<sup>nd</sup> Member

8) Please speak to me by 3/11/30

1/12



NOTE—Contn. Sheet.

9. I agree with the C. J. that it is  
not necessary (at this stage) to go  
beyond what the Madras High Court has  
done. The H. C. may be asked to take  
such action as they consider expedient.

DEWAN'S OFFICE  
3136  
8 - DEC 1930

3.12.30.

Draft

P. M.

3/12

10 Draft put up for orders.

Legal R.

P. M.

6/12

11. 2nd pursuant  
before issue.

P. M.

2nd Member

6/12

W. M.

8/12

OFFICE OF THE  
SECOND MEMBER OF COURTS  
8 DEC 30  
No. 4957

6

W.

8/12

P. M.

8/12

8/12

12 Mule

101230

P. M.

11/12

12/12

ISSUE  
&  
RESUBMIT.

May this issue?

150  
11/12

yes + resubmit

M. M.

11/12

To

The Reg. High. Ct.

No. 1. 3419. d. 15.12.30. Informing that we  
agree that it is not necessary at present to go  
beyond what the Madras H. C. has done, and to take  
such action as they consider expedient.

2772

App. F. III-2]

General and Revenue  
Secretariat

File No.

of 193

Serial  
No.

DEPARTMENTAL OFFICE  
364  
24 DEC. 1930

Submitted for orders as to whether  
any further reply is to be sent to  
Sir Charles Toddhunter in the matter.  
Kind refce, para 7 supra.

Legal R<sup>r</sup>

one  
17/12

yes. A new R<sup>r</sup> b<sup>r</sup>  
reply may be put up.

D. M.  
17/12

889  
19/12

A draft reply is put up  
for approval.

Legal R<sup>r</sup>

one  
19/12

Draft reply to Sir  
Charles Toddhunter is sent to  
+ may be appd

D. M.  
23/12

2<sup>nd</sup> Member  
Deputy

one  
24/12

889  
26/12

one  
26/12

For perusal before issue-

Chief Secy)

one  
26/12

one  
26/12  
889

OFFICE OF THE  
SECOND MEMBER OF COUNCIL  
23 DEC. 1930  
No. 5513

copy is put  
for favour of  
nature -  
one

NOTE - Contn. Sheet.

File No.

89

of 1930

General and Revenue  
Secretariat

To

Sir Charles Todd Hunter

No. P. 3593. d. 21.12.30

stating that the law on the subject under  
 rule 40 of the C.P. Code is practically the same in  
 Mysore as in Madras excepting that a few clauses are  
 modified and that Govt. agree that it is not  
 at present necessary to go beyond what Madras has  
 done in the matter and has been suggested  
 to the H.C. that they may take such action  
 as they consider expedient

TSB  
 27/12  
 please file a file no.  
 ML  
 29/12  
 file registered  
 30/12

Confidential

20 No 21

Enclosure

Please peruse draft  
acknowledging & saying  
that the Chief Justice will  
be committed - only 30.10.30

Chief Secy  
with copies

My dear Krishna Rao,



Vasantha Mahal,

Mysore, 28th October 1930.

29.

Letter 60-30-1

Sub-Note a draft  
Dewan) 31/10/30

only  
31-10-30

With reference to the discussions we had at Dasara time on the subject of the employment of the Civil Procedure Code and the Orders thereunder to secure arrest and imprisonment for debt, sometimes in cases in which other means might be more effectual, I am sending you herewith, in case you should have time to peruse it, the report written on the subject in 1916 by Mr. Curgénven, now Mr. Justice Curgénven of the High Court of Madras.

I also enclose (for your own perusal only) a copy of his letter to me which explains why it has taken till now for any orders to be issued in the sense of his recommendations.

I don't know whether the law or the conditions are the same in Mysore as in Madras though the manner in which warrants of arrest are issued seems



2

perhaps to suggest it. If the conditions and the statistics reveal a similar state of affairs, you might perhaps think it worth while to consult the learned Chief Justice as to the advisability of taking action on somewhat the same lines as Madras has done.

Yours sincerely,

*G. S. M. S.*



3

Letter from Mr. Justice A.J. Cargenven, I.C.S., Judge of the High Court of Judicature, Madras, to Sir Charles Todhunter, K.C.S.I., J.P., Mysore.

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Your d.o.No.429, dated the 15/16th instant about imprisonment for debt. I send you herewith a copy of the report. The original reference of it to the High Court met with a very chilling reception, the reply (in 1917) containing a justification of the status quo tempered with a lukewarm support for some of the minor proposals. Nothing seems to have been done by Government until 1922, when another reference was made, evidently at the instance of K.Srinivasa Ayyangar. The letter pointed out that "the number of judgment-debtors arrested but released without imprisonment, and the number of judgment debtors actually imprisoned, are five times and double, respectively, the figures for the rest of India put together" — a state of affairs the Government could not contemplate with satisfaction! So the High Court was requested to examine the proposals afresh. To this it was replied that their Lordships saw no reason to modify their previous views. Government



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returned to the charge in 1926, expressing themselves in favour of some of the proposals, and this correspondence has had issued this year in some amendments to Orders ~~XX~~ and ~~XXI~~ C.P.C.

O.~~XX~~ rule II(2) has been amended so as to empower the Court, after the passing of the decree, to order payment by instalments 'after notice to the decree-holder', and not, as the rule formerly stood, with his consent. This was ~~xxx~~ my recommendation.No.VII(Pp.38 Report).

O.~~XXI~~.V.40(I) The sub-rule has been altered to provide that the Court may disallow the application for arrest where an insolvency petition has been presented by or against the judgment debtor(recommendation V).

"sub-rule(2)."may" has been changed into "shall" in the creditor's interests, which no doubt expresses the intention better.

"sub-rule (5) et seq provide for intermediate custody and kindred matters.

In case you haven't got the amended O.~~XXI~~.V.40



5

I enclose a copy of it.

It is of course too early to know whether these changes will affect the figures. The "statistics of Civil Courts, 1929" (not yet issued) show 3920 judgment debtors imprisoned, and 45,830 ~~am~~ arrested, but released without imprisonment.

The only other change made, and it would not affect you, is to allow a debtor to file his petition in the Presidency Town in forma pauperis if he declares his assets at less than Rs.100; thus getting off the fee of Rs.15. Even this did not go through without opposition.

I still adhere to the general view expressed in para 37 of my Report, but I know they are <sup>sniffed</sup> ~~shifted~~ at by the majority of judges, who, next perhaps to priests, are the most conservative class in the world. Any rules rigorously restricting imprisonment would no doubt involve a troublesome transitional period, but eventually I think we should get a cleaner system of credit.



6

Of course I don't know why you want this information, but if I can give you any further help, I shall be very pleased.



7

*Substitute the following for rule 40 of Order XXI—*

40. (1) When a judgment-debtor appears before the court in obedience to a notice issued under Rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, and it appears to the Court that an insolvency petition has been presented *by or against the judgment-debtor* or that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the burden of proving the inability to pay being on the judgment-debtor, the Court may upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be.

(2) Before making an order under sub-rule (1), the Court *shall* take into consideration any allegation of the decree-holder touching any of the following matters, namely—

(a) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account;

(b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree;

(c) any undue preference given by the judgment-debtor to any of his other creditors;

(d) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or

some part thereof when he has, or since the date of the decree has had, the means of paying it;

(e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree.

(3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, in its discretion, order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court.



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(4) A judgment-debtor released under this rule may be re-arrested.

(5) Where the Court does not make an order under sub-rule (1) it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison.

Provided that, in order to give the judgment-debtor an opportunity of satisfying the decree, the Court before making the order of committal may leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding ten days, or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

When the Court sees fit to leave a judgment-debtor in the custody of an officer of the Court and the judgment-debtor does not pay the costs incidental to such intermediate custody, it shall be competent for the Court to require the decree-holder, on pain of his application for arrest being disallowed, to pay into Court such sum as the Judge deems sufficient to cover such costs including batta for process-server, subsistence of the judgment-debtor and cost of conveyance, if any; and sums disbursed by the decree-holder under this proviso shall be deemed to be costs in this suit.

(5-A) During the temporary absence of the Judge who issued the warrant rule 37 or 38, the warrant of committal may be signed by any other Judge of the same Court or by any Judicial Officer superior in rank who has jurisdiction over the same locality, or where the arrest is made on a warrant issued by the District Judge, the warrant of committal may be signed by any Subordinate Judge or District Munsif, empowered in writing by the District Judge in this behalf.

(6) No judgment debtor shall be committed to the civil prison or brought before the Court from the prison to which he has been committed pending the consideration of any of the matters mentioned in sub rule (2) unless and until the decree-holder pays into Court such sum as the Judge may think sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort for the journey to and from the prison.

Sub rule (5) of rule 39 shall apply to such payments.

nr 6 in Mysore code.

# Government of Madras

HOME DEPARTMENT.

(JUDICIAL).

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**G.O. No. 2622, 9th November 1916**

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N.P.

## **Imprisonment for debt.**

Forwarding to the Honourable the Judges of the High Court, for remarks, the report of Mr. A. J. Curgenvin, I.C.S., on the law regulating —.

GOVERNMENT OF MADRAS.

HOME DEPARTMENT.

(Judicial).

READ—the following paper :—

*From*—A. J. CURGENVEN, Esq., I.C.S., Officer on Special duty.  
*To*—the Secretary to Government, Judicial Department.  
*Dated*—the 22nd March 1915.

**Order—No. 2622, Home (Judicial), dated 9th November 1916.**

The attention of the Government having been attracted sometime ago to the question of imprisonment for debt, they took advantage of the services of Mr. A. J. Curgenvén, I.C.S., being available, to place that officer on special duty to make a detailed inquiry into typical cases. The Government have now perused Mr. Curgenvén's thorough and careful report and are pleased to commend that officer for it. The report will be forwarded to the Honourable the Judges of the High Court for favour of an expression of their views on the suggestions made in it.

(True Extract)

P. RAJAGOPALA ACHARIYAR,  
*Secretary to Government.*

To the Honourable the Chief Justice (with C.L.).  
„ A. J. Curgenvén, Esq., I.C.S.  
Copy to the Public Department.

R E P O R T

ON THE

OPERATION OF THE LAW REGULATING  
IMPRISONMENT FOR DEBT.



MADRAS:  
PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRESS:

1916.

# REPORT

ON THE

## SECTION I.

## INTRODUCTORY.

*Terms of reference.*—In G.O. No. 541, Financial, dated 9th August 1914, the Government sanctioned the deputation of an officer to investigate the circumstances in which persons are imprisoned for debt in this Presidency, and in G.O. No. 952, Public, dated 11th August 1914, I was entrusted with this duty. My instructions were “to visit the civil jails “at Madras and Coimbatore, and elsewhere if need arises and opportunity “permits, and to examine a certain number of the cases of civil debtors “at each place with special reference to the question whether their “imprisonment was due to their inability to pay their debts or to their “unwillingness to do so.”

2. *Procedure.*—In obedience to these instructions I selected cases in the civil jails at Madras, Coimbatore, Tanjore and Ootacamund. After obtaining such particulars as the jail registers afforded, I supplemented the information by a reference to the court records and then forwarded the cases thus prepared to the Revenue authorities with full instructions as to the points to be elicited by local inquiries. Reliance may, I think, be placed on the general results of these inquiries for the reason that they were carried out by some twenty officers, working for the most part independently of each other. In a few cases I made or initiated the inquiry myself, and I took the opportunity, at the same time, to interview all civil debtors then in confinement in the jails visited (though the special cases with a few exceptions relate to released prisoners) as well as to ascertain the views of judicial officers and others. Besides cases of persons actually imprisoned for debt, a few have been taken in which a settlement was come to either on issue of an arrest warrant or on arrest, in order that the operation of this method of execution might be observed in its early stages. We have to study not only the effect of imprisonment itself, but also of the threat of imprisonment.

3. The cases selected by me for inquiry, excluding those in which the debtor was not traceable or which for other reasons are not worth placing on record, are set forth in Appendix I to this report. They are arranged according to the districts to which they relate, but otherwise they stand in no particular order. In all there are 108 cases printed in the appendix, viz. :—

|             |     |     |     |     |     |     |     |        |
|-------------|-----|-----|-----|-----|-----|-----|-----|--------|
|             |     |     |     |     |     |     |     | Cases. |
| Madras city | ... | ... | ... | ... | ... | ... | ... | 37     |
| Coimbatore  | ... | ... | ... | ... | ... | ... | ... | 40     |
| Tanjore     | ... | ... | ... | ... | ... | ... | ... | 15     |
| Nilgiris    | ... | ... | ... | ... | ... | ... | ... | 16     |

The Madras and Coimbatore cases were taken virtually at random and show the general effect of imprisonment for debt in those localities. I considered it unnecessary to pursue the same plan in the other two districts, where my inquiries and a scrutiny of the Jail and Court records showed that the relations between the ordinary professional money lender and his client, which give rise to the large majority of executions against the person, were in no way peculiar to those areas. The cases selected in these districts, accordingly, represent in the main a search for special conditions, Tanjore being chosen as a locality in which the landlord and tenant system is highly developed, while the feature of the Nilgiris is the presence of certain primitive cultivating classes of which the most numerous is the Badagas. Under each case are comprised particulars of the debt, the debtor, the decree and the proceedings in execution. The further particulars given, expressed as concisely as possible, are those which were elicited by local inquiries. I have added in each instance a brief commentary drawing attention to the features which the case presents, in order that it may as far as possible speak for itself, and thus to avoid an excessive amount of analysis in the body of this report.

4. After gaining some acquaintance with the nature of the problems involved, I addressed to certain District Judges a memorandum embodying some tentative conclusions and a few queries, asking them to favour me with their views and those of one or two experienced Subordinate Judges and District Munsifs. The memorandum and the replies received are printed as Appendix II, and I am much indebted for the care and thoroughness with which my request was complied with. I expected that my reference would provoke some criticism, and as will be seen a good deal of criticism has been received. The case for maintaining the *status quo* is fully represented in these papers, although there will be found a minority in favour of reform.

## SECTION II.

### THE LAW AND HOW IT IS APPLIED.

5. *Hindu Law*.—Those who advocate the retention of the law authorising imprisonment for debt in India sometimes open their case by a reference to a provision of this character in Hindu Law. I may as well state, therefore, what seem to have been the facts, namely, that while confinement was recognised as, in certain cases, an appropriate means of punishing or coercing the debtor, there were no regular tribunals to enforce such a measure, and the creditor was merely counselled what law he might take into his own hands. Moreover, imprisonment was not to be resorted to until milder measures had failed, it was not approved in the case of persons of standing and respectability, and debtors disabled by famine or other calamity were to be compelled only to pay by small instalments according to their ability. It may be safely inferred, accordingly, that neither in principle nor in practice was the Hindu Law one of unqualified severity against the debtor.

6. *British Indian Law*.—The law incorporated in the earliest British enactments in India was less the successor to the Hindu Law on this subject than the application to India of provisions at the time universally current in Europe. Briefly it was that for the satisfaction of a decree execution could be effected against both the property and the person of the debtor (section 9, Regulation III of 1802 and section 13, Act VIII of 1859). The Code of Civil Procedure of 1877 continued this provision, with the modification however that the court should have discretion to refuse execution simultaneously against person and property, the creditor still

being free so pursue either course at his will. The same law was copied unchanged into the Code of 1882.

7. Meanwhile in 1881 the attention of the Government of India was attracted to the subject by the arrest of *pardanashin* women in execution of decrees, and the opportunity was taken to obtain from local Governments a full expression of their views on the subject of imprisonment for debt. The question was referred by the Madras Government to a number of judicial officers, whose replies were by a large preponderance in favour of retaining the existing procedure. The Government, in replying to the reference, expressed their entire concurrence in the view that it would be highly inexpedient to abolish "the so-called imprisonment for debt." The Government of India, however, took a different view, and in due course embodied their conclusions in the Debtors Bill, 1886, the purpose of which was to assimilate the Indian to the English law on this subject, viz., virtually to restrict imprisonment to cases in which the court is satisfied that the debtor has fraudulently disposed of his property, or has neglected or refused to pay the money when possessed of the ability to do so. Imprisonment was to be at the cost of the State, not of the creditor. The Statement of Objects and Reasons attached to this Bill contains an instructive summary of opinions on this subject, and clearly sets forth the theoretical objections to the indiscriminate imprisonment of judgment-debtors. On the Bill being referred to the Madras Government for opinion, they expressed themselves against its extension to this Presidency until trial of it had been made in the North-West Provinces and Oudh, to which province alone the Government of India proposed to render it applicable in the first instance.

8. The measure that eventually became law as the Debtors Act, 1888, differed widely from this Bill, the Select Committee responsible for the changes evidently concluding that the diversity of opinions received rendered a compromise expedient. Under this Act (which, now incorporated in the Civil Procedure Code, as order XXI, rules 37 and 40, represents the law as it stands at present) discretion has been given to the court, on an application being made for the execution of a decree by arrest and imprisonment, to issue, instead of a warrant, a notice calling on the debtor to show cause why he should not be committed to jail. If the debtor obeys the notice, and it appears to the court that he is unable from poverty or other sufficient cause to pay the money, it may disallow the application for arrest. The inquiry may comprehend such matters as the fraudulent disposal of property by the debtor, his neglect or refusal to pay the money when he had the means to do so, and the likelihood that he will abscond. The main difference between this Act and the original draft is that it leaves an inquiry into the debtor's circumstances to the option of the court. "The effect of the Bill," said Sir Andrew Scoble, who was in charge of it in the Supreme Council, "will now be to prevent the imprisonment of debtors who are paupers but not fraudulent; and to leave creditors the power of imprisoning debtors when a court has been satisfied that such process may justly be resorted to." It remains to be seen how far this prophecy is being fulfilled.

9. *Characteristics of cases inquired into.*—Before proceeding to a detailed examination of the special cases, I have a few observations to make on the general characteristics they disclose. I have satisfied myself, by an examination of jail and court registers and records, as well as by conversations with judicial officers and other inquiries, that these cases, regarded as a whole, are fully representative of the circumstances in which persons are arrested and imprisoned for debt. Conclusions drawn from these specimens regarding the operation of the law may be accepted as generalizations, though the cases are not of course sufficiently numerous to justify any precise statistical deductions. Certain broad facts become evident as one peruses them. In the first place the professional

moneylender—whether Marwari, Nattukkottai Chetti, Labbai, or *nidhi*—is responsible for the great mass of proceedings. Included among the selected instances are other cases,—cases of loans from landlord to tenant or cooly, of suits on accounts for goods supplied, and of other miscellaneous transactions; but these form but a small proportion of the cases in which arrest is resorted to. Next, the vast majority of loans are unsecured, the legal instrument being a promissory note signed by the borrower either with or without sureties, the sureties, again, either signing as such, or, more commonly, merely adding their names to that of the principal. Thirdly, the debtors are for the most part men in humble circumstances,—petty traders, butchers, cartdrivers, clerks, menial servants, small cultivators and agricultural coolies. This is apparent from the smallness of the sums usually involved, though even these, such is the recklessness with which money is borrowed, are often out of proportion to the resources of the debtors, as many of the special cases will show. The following statement gives particulars of the sums for which debtors were imprisoned in the three jails shown:—

| Number of debtors imprisoned during<br>1913 for sums |                           |         |     |     | Madras. | Coimbatore. | Tanjore. |
|------------------------------------------------------|---------------------------|---------|-----|-----|---------|-------------|----------|
| (a)                                                  | Less than Rs. 10          | ...     | ... | ... | 14      | ...         | ...      |
| (b)                                                  | Between Rs. 10 and Rs. 25 | ...     | ... | ... | 53      | 4           | 10       |
| (c)                                                  | Do. 25                    | do. 50  | ... | ... | 92      | 39          | 61       |
| (d)                                                  | Do. 50                    | do. 100 | ... | ... | 116     | 115         | 85       |
| (e)                                                  | Do. 100                   | do. 200 | ... | ... | 93      | 124         | 82       |
| (f)                                                  | Do. 200                   | do. 500 | ... | ... | 66      | 117         | 51       |
| (g)                                                  | Over Rs. 500              | ...     | ... | ... | 50      | 51          | 28       |

In many of the special cases it has not been possible to obtain useful information regarding the purposes for which the loans were contracted, and especially as to the degree of necessity which gave rise to them. A common ground for borrowing is "family expenses," but this may signify improvidence and bad management just as much as thrift frustrated by misfortune. A fact, however, which many of these cases reveal clearly, and which, as I hope to show, forms a strong element in the case against indiscriminate imprisonment for debt, is the ease with which persons of no substance succeed in borrowing money, either on their own account or with the aid of sureties. A butcher earning a small monthly salary and having no property manages to borrow Rs. 70 from a Marwari (cases Nos. 3 and 16). A young man, after squandering his patrimony, still gets credit (case No. 7). Another (case No. 26) borrows Rs. 50, to quote the inquiring officer, "just to have a jolly day," and the Marwari who lent it him, after trying the screw of imprisonment, has to write the money off as a bad debt. A man is accepted as surety, evidently because he can be imprisoned, rather than because he has attachable property (No. 39). A petition-writer earning about Rs. 20 a month, and possessing no other resources, is able to buy a harmonium costing Rs. 35 on credit (No. 25). There are a number of other similar instances among these cases, but I do not think that I need labour the point, because every one who has had experience of this country is familiar with this characteristic. A few other general features are worth notice, though to discuss them would carry us too far. The rates of interest charged vary within wide limits. The moneylender will seldom do business under 24 per cent. In Coimbatore 36 per cent. is the common rate, while any rate up to 75 per cent. is not unusual, the latter rate being frequent in the Nilgiris. As an extreme, but by no means unique, instance of high interest I may cite a case which came under my notice in which a cooly working in Madras executed a promissory note for Rs. 30 in favour of a Labbai moneylender. The interest named in the bond was two annas per rupee per mensem, equivalent to 150 per cent. per annum. Less than ten months after he received the money the debtor had a decree passed against him for Rs. 72-9-0, and was only saved from imprisonment by an order of the Court allowing him to make payment in monthly instalments of one rupee. I shall again allude to this power

to order instalments after the decree has been passed. Another point brought out by these cases and, equally with the rates of interest not irrelevant to my subject as bearing on the question how far the law should enable the moneylender to realize his demands, is the manner in which debts are allowed to accumulate interest. Many of the cases will be found to violate the rule of *damdupat*, that the accumulated interest should not exceed the principal. When finally swollen by the court costs and expenses of execution the claim may amount to three or four times the original loan. Thus a loan of Rs. 10 becomes in three years a decree for Rs. 23-2-0 and, including costs, Rs. 37-15-1 (No. 38); a debtor, sued on a simple bond for Rs. 15, is arrested for Rs. 45-15-3 (No. 41); a promissory note for Rs. 200 results in a decree for Rs. 407-5-4, and a final claim for Rs. 466-4-11 (No. 45); and so on. Case No. 94, from the Nilgiris, shows how for an original debt of Rs. 400 contracted by the father the son was arrested for a sum of Rs. 1,945, though here the creditor was reasonable enough in the settlement he agreed to. When we reflect that many of these promissory notes, ostensibly for cash received, are really renewals of earlier and smaller ones, it becomes apparent how great a disproportion interest bears to principal in these money-lending transactions, even on the assumption, which is frequently unjustified, that the whole of the consideration named in the bond passes to the borrower. The Tamil proverb, that the Nattukkottai Chetti cares more for interest than for principal, is firmly based on fact.

10. *Questions for consideration.*—In discussing now in greater detail the evidence afforded by these cases the most convenient course will be to consider what light they throw on the working of the several provisions of law governing execution against the person. At the same time, it is well to keep in view the main issues upon which findings are desired. I would set them out as follows:—

- (1) How far is process against the person resorted to and how far is it successful as a means of recovering debts?
- (2) Should the court comply in all instances with an application for the arrest of a judgment-debtor?
- (3) Should the court make an inquiry into the circumstances of a judgment-debtor before directing his imprisonment?
- (4) How far should the court have power to vary the method of satisfying the decree, e.g., by the award of instalments?
- (5) How far does insolvency procedure in practice afford relief to indigent debtors?
- (6) Is any alteration required in the maximum periods for which debtors may be imprisoned?

11. *Efficacy of execution against the person.*—A creditor, having obtained his decree, may take out execution against either the person or the property of the judgment-debtor (section 51, Civil Procedure Code), discretion being reserved to the court to refuse execution against both property and person simultaneously (order XXI, rule 21, Civil Procedure Code). Where there is more than one judgment-debtor, execution for the whole amount due may be taken out against one or more of them. This option has important practical results in the case of debts due to moneylenders, owing to their practice of requiring more than one signature to their promissory notes. How freely decree-holders make use of the weapon of arrest and imprisonment will be seen from a few representative figures. During 1913 there were 330,293 applications for execution in the mufassal civil courts. It is not known how many of these were for process against the person, and how many for process against property; but there were, during the same year, 20,946 persons arrested under civil court decrees, as against 16,008 attachments of property. It is probable, therefore, that a large preponderance of the applications for execution were for warrants of arrest. This presumption is supported by the figures,

which have been specially collected, for (a) the Coimbatore district and (b) the Small Cause Court, Madras. The following table gives full particulars :—

|                                                          |   |                                                                   |  |  |  | Coimbatore. | Small Cause Court, Madras. |
|----------------------------------------------------------|---|-------------------------------------------------------------------|--|--|--|-------------|----------------------------|
| I. (a) Number of applications against property ...       |   |                                                                   |  |  |  | 2,026       | 6,463                      |
| (b) Do. do. the person ...                               |   |                                                                   |  |  |  | 12,661      | 8,361                      |
| Total ...                                                |   |                                                                   |  |  |  | 14,687      | 14,824                     |
| II. Number of warrants issued—                           |   |                                                                   |  |  |  |             |                            |
| (a) Against property—                                    |   |                                                                   |  |  |  |             |                            |
| (i) Unsuccessful ...                                     |   |                                                                   |  |  |  | 954         | 2,533                      |
| (ii) Partially successful ...                            |   |                                                                   |  |  |  | 371         | 223                        |
| (iii) Wholly successful ...                              |   |                                                                   |  |  |  | 1,362       | 814                        |
| Total ...                                                |   |                                                                   |  |  |  | 2,687       | 3,570                      |
| (b) Against the person—                                  |   |                                                                   |  |  |  |             |                            |
| (i) Remaining unexecuted ...                             |   |                                                                   |  |  |  | 492         | 613                        |
| (ii) Returned unexecuted ...                             |   |                                                                   |  |  |  | 7,006       | 4,699                      |
| (iii) Executed—                                          |   |                                                                   |  |  |  |             |                            |
| Debtor not committed to jail.                            | { | (1) Money paid to bailiff after issue of warrant ...              |  |  |  | 628         | 504                        |
|                                                          |   | (2) Settlement arrived at after arrest but before imprisonment... |  |  |  | 2,377       | 227 *                      |
|                                                          |   | (3) Debtor released under insolvency provisions ...               |  |  |  | 61          | 20                         |
|                                                          |   | (4) Money paid into jail ...                                      |  |  |  | 37          | 72                         |
|                                                          |   | (5) Debtor released by order of court...                          |  |  |  | 98          | 52                         |
|                                                          |   | (6) Debtor released owing to non-payment of batta...              |  |  |  | 257         | 110                        |
|                                                          |   | (7) Debtor released owing to expiry of time ...                   |  |  |  | 15          | 14                         |
|                                                          |   | (8) Debtor released by order of insolvency court ...              |  |  |  | 3           | 33                         |
| Total number of warrants executed against the person ... |   |                                                                   |  |  |  | 3,476       | 1,032                      |
| Total number of warrants issued against the person ...   |   |                                                                   |  |  |  | 10,974      | 6,344                      |

These figures show that in Coimbatore applications for arrest were more than six times as numerous as applications to attach property. The numbers of warrants of each kind actually issued were in the proportion of 9 to 2. Of the 2,687 warrants issued against property, 50·6 per cent. were wholly successful, 13·8 per cent. were partially successful, while 35·6 per cent. were unsuccessful. Of the 10,974 warrants issued against the person, as many as 7,006 or 62·2 per cent. were returned unexecuted. These were not all necessarily infructuous as occasionally a judgment-debtor pays the claim or at least makes a payment towards the decree on hearing that an application has been presented for his arrest; and the creditor, in consideration of the payment, abstains from further proceedings on the warrant. The results of the 3,476 warrants executed have been given in detail in the statement. In 410 cases the debtor was actually committed to jail while in the remainder he either settled with his creditor or (in a few cases) obtained release by a petition in insolvency. In 665 cases, or 19 per cent. of the whole, the decree amount was paid in cash, either into the court or the jail. In another 2,475 cases, or 71 per cent., a settlement between creditor and debtor, the precise nature of which is unknown, was come to, and satisfaction of the decree was certified. In all, therefore, 90 per cent. of the arrest warrants issued may be regarded as successful, though it is not known whether in all cases the full claim was realized.

\* Includes 188 cases in which the court ordered debtor's release on condition that he paid the decree amount by instalments.

The figures for the Small Cause Court show a smaller disproportion between applications against property (i.e., moveables) and against the person respectively, being roughly in the proportion of 7 to 9. Seventy-one per cent. of the property warrants were wholly unsuccessful, while 82 per cent. of warrants executed against the person succeeded, this figure however including 188 cases, or 18 per cent., in which the debtor was released on an order of the court permitting him to pay the decree debt in instalments. This is a feature of the Small Cause Court procedure to which I will make further allusion. Twenty-seven per cent. of the debtors arrested were committed to jail, and of these again 124, or 44 per cent. of those committed, managed to satisfy their creditors.

12. As to the efficacy of imprisonment, there can be no two opinions if the creditor's interests alone are considered. The figures showing the freedom with which it is resorted to and the proportion of successful cases, are alone sufficient proof. Many of the judicial officers consulted testify to the same effects. So many of the special cases show the same thing that I need only refer so one or two among the number. A milkman in Madras, arrested for Rs. 80, after 17 days in jail paid up by pawning some jewels which the creditor would have found difficulty in attaching (No. 10). Similarly a peon in the Electric Corporation Office paid his debt in the same manner (No. 11). Case No. 12 is of a like character. Here there were houses that might have been attached, but the process would have been infinitely more troublesome. In these cases imprisonment acted in a salutary manner, the property used to pay the debt belonging to the debtor. Other instances however will be cited later on to show that in some circumstances imprisonment is even too efficacious; I allude especially to cases in which money is wrung from a friend or relative of the debtor, and cases in which to pay the debt a further liability is contracted. Again, there are numerous instances in which property might have been proceeded against where the moneylender preferred the course of applying for arrest; e.g., cases Nos. 4, 8, 10, 12, 14 and many others. Execution in the case of unsecured debts is, in fact, almost as a matter of course taken in this way. I need not, I think, go further to prove that process against the person is highly effectual in recovering dues.

13. *Applications in Insolvency.*—Before examining the obligation of execution course to deal in a discriminating manner with applications for arrest and imprisonment, I propose to clear the ground by ascertaining the practical bearing of the insolvency law on this subject. In theory the power of an insolvent debtor to petition in insolvency ought to afford him the means of escaping imprisonment. In practice this result, as I shall presently show, is but imperfectly attained. Certain obstacles, the chief of which are (a) ignorance and prejudice, (b) expense and (c) the ill-adaptation of some of the insolvency provisions to the needs of judgment-debtors, are responsible for this failure.

(a) The procedure prescribed by the Insolvency Acts, having to provide elaborate safeguards against fraud, is complicated and often protracted; it is a branch of the law which has been imported from England and is still largely at variance with the ideas and methods of Indian litigants, and to the class of persons who are commonly imprisoned for debt it is practically a *terra incognita*. From conversations which I have had with civil prisoners, as well as from the results of inquiry into the special cases, I am clear that ignorance of the law, and indeed inability to grasp its intention and consequences, is largely responsible for failure to have recourse to it. How is one to expect such a debtor as is described in case No. 44, or the coolies to which cases Nos. 41, 57, 81 and 96 refer, or the weaver in case No. 52, or the carpenter in case No. 98 to take such a course when they are suddenly arrested and imprisoned? The provisions of section 55 (3) of the Civil Procedure Code were designed to remove the ignorance of civil debtors on this subject; but from what I have heard, including the admissions of some judicial officers, it is probable that the

courts do not regard very seriously the duty of enlightening a debtor as to his facilities under the insolvency law, or stop to explain to him precisely what he should do, and discuss any difficulties he may feel in taking action. If the courts were required to record their observance of this provision, and the reply made by the debtor to the information proffered, some progress might be made in popularising the insolvency law; though I do not pretend to think that the effect would be great. Secondly, there is ground to believe that an unusually severe stigma is attached to the bankrupt in this country. This is less the case in Madras, where people are becoming accustomed to the procedure, than in the mufassal; but it may generally be said that to go through the insolvency court is a greater disgrace than to spend a term in the civil jail, and that the former experience is more destructive of credit. This fact is well known to cross-examining counsel, as the questions which they put often show. It is traceable, among Hindus, to the penalties which their religion attaches to the repudiation of debts and may in part be due also to the extent to which fraud enters into insolvency proceedings in this country. It is a commonly held opinion, largely based upon fact, that only swindlers seek this kind of refuge from their creditors. As instances of a disinclination to resort to insolvency on these grounds may be read cases Nos. 56 and 61.

(b) As regards the expense, opinions differ as to whether the fees and other expenses ordinarily incurred in the mufassal (Act-III of 1907) are really deterrent. As will be seen, a number of debtors in the special cases advance such a plea, though it is doubtful whether many of these seriously contemplated the step, while most of the judicial officers consulted are of a contrary opinion. The unavoidable expenses are only 8 annas for the stamp upon the petition, registration charges at the rate of 4 annas per creditor, and something for professional assistance, say Rs. 1-8-0 if only a petition-writer is employed and Rs. 5 if a vakil is engaged. The charges for publication need not concern us, as they are only obligatory if the assets exceed Rs. 500. I do not think that these expenses can often be prohibitive. The case is different in the Presidency town. According to the information supplied to me the ordinary fees are as follows:—

|                                                                                                                             | RS. | A. | P. |
|-----------------------------------------------------------------------------------------------------------------------------|-----|----|----|
| Stamp paper for petition ... ..                                                                                             | 15  | 0  | 0  |
| Translation of petition, at 4 annas per folio of 72 words, say ...                                                          | 0   | 12 | 0  |
| Judge's summons for adjudication ... ..                                                                                     | 2   | 0  | 0  |
| Do. for protection ... ..                                                                                                   | 2   | 0  | 0  |
| Affidavit for protection order ... ..                                                                                       | 0   | 12 | 0  |
| Do. for declaration ... ..                                                                                                  | 0   | 12 | 0  |
| Schedule of names of creditors, amount of debts, etc. (at 12 annas per 8 folios and 8 annas each subsequent folio), say ... | 3   | 0  | 0  |
| Notice forms at 4 annas each, say ... ..                                                                                    | 1   | 8  | 0  |
| Copy of protection order ... ..                                                                                             | 0   | 12 | 0  |
| Extract copy at 12 annas per folio, say ... ..                                                                              | 1   | 8  | 0  |
| Total ... ..                                                                                                                | 28  | 0  | 0  |

The principal difference between these fees and the fees charge in the mufassal is the cost of the stamp paper required for the petition, which is thirty times as high in Madras as outside it. It seems difficult to justify these expenses unless upon the general principle that all civil litigation must pay for itself, as if the argument is used that fees are required in order to prevent too unrestrained a resort to the insolvency provisions the obvious reply is that the imposition of fees acts as a check only on the real pauper, and does not deter the fraudulent insolvent who has placed his property out of his creditors' reach. One would have supposed that of all classes of legal business, that of insolvency should most be open to pursuit *in forma pauperis*, at least in cases where the assets are declared to be below a certain figure. A possible course would

be to waive the fees in the first instance, making them a first charge upon the assets (if any) realized by the receiver. A curious reason has been given to me for not reducing the Madras fees to the level of those payable in the mufassal. For reasons which I need not enter into here many petitioners prefer to be adjudicated under the Presidency Towns Act, and as the qualification by residence under section 11 (b) of that Act is very easily obtained a number of residents outside Madras take advantage of it, a fact which, I may add parenthetically, vitiates the statistics on the point. The proper remedy for this is to amend section 11 in such a way as to exclude nominal residents, rather than to keep the fees high in the hope of discouraging them.

To these fees have to be added the cost of legal assistance. Sir V. C. Desikachari points out \* that "only the double, and the ruinously costly, agency of attorney and counsel" is permitted before the Commissioner in Insolvency. The existing authority for this restriction is section 121 of Act III of 1909, which continues orders previously in force. As a matter of fact I learn from Mr. Wilson, the Official Assignee, that the majority of insolvency petitions are drafted by petition-writers and presented in person; but so far from this being a saving to the petitioner's pocket, the business is in the hands of a few petition-writers whose ordinary charge for the service is Rs. 50. I am at a loss to propose a remedy for this state of affairs. Mr. Wilson suggests making representation by the legal agency referred to above compulsory upon all petitioners in order to cut out the petition-writer, and fixing a moderate scale of fees, but I doubt whether it would be a defensible course to compel every petitioner to accept legal help, as it is admittedly not necessary in all cases. I venture to suggest that the views of the High Court may be obtained on the general question of the cost of petitioning in insolvency. It must be remembered that a large proportion of the debtors imprisoned belong to a humble grade of society, and are proceeded against for debts less than Rs. 100 in amount. Rather than incur so much expense even if he is in a position to do so, a debtor, when arrested, prefers to take his chance of coming to terms with his creditor as by the payment of a sum on account or the promise of payment by instalments, a course which the creditor frequently accepts in preference to throwing in his lot with other claimants.

(c) Insolvency procedure is regulated within the City of Madras by the Presidency Towns Insolvency Act (III of 1909), and elsewhere in the Presidency by the Provincial Insolvency Act (III of 1907). Let us first see what opportunities are afforded to an insolvent judgment-debtor, whose person has been attached, to have recourse to the provisions of the Provincial Act. (1) When such a debtor is arrested and brought before the court, the court shall inform him that he may apply to be declared an insolvent [section 55 (3), Civil Procedure Code]; and where he expresses his intention so to apply, and furnishes security that he will do so within one month and that he will appear when called upon, the court shall release him from arrest [section 50 (4)]. Under section 6 (3) (b) of the Insolvency Act a debtor who has been arrested in execution of a decree may present an insolvency petition however small may be the amount of his debts. (2) Secondly, if a debtor does not avail himself of this opportunity, or if he is unable to provide the security required, he may present an insolvency petition from the jail in which he is confined; and, as soon as an order of adjudication is passed, he will be released [section 16 (2) (b), Act III of 1907]. The procedure within the City of Madras is somewhat different. (1) There is no provision in the Small Cause Courts Act, or in the rules thereunder, resembling section 55 (3) of the Civil Procedure Code, so that a judge of that court is not bound to draw a judgment-debtor's attention to the insolvency law, and has no power to release him on

security pending the presentation of an application. He can only be released from arrest by order of the Insolvency Court. (2) On the other hand, as soon as a petitioner presents his application, an adjudication order is passed, and thereafter an insolvent who files his schedule [section 24] and obtains the Official Assignee's certificate [section 25 (4)] can obtain a protection order from the court [section 25 (1)] saving him from arrest or detention. The practical effect of these provisions can best be seen by dealing with each Act separately. I will take the Provincial Act first.

(1) In Coimbatore during 1913, 109 insolvency applications in all were received. Of these 61 were presented by judgment-debtors under the provisions of section 55 (4), Civil Procedure Code, compared with 3,749 arrest warrants executed and 398 persons imprisoned. Of the remaining insolvency applications, 4 were presented by civil debtors undergoing imprisonment, 41 by other debtors and 3 by creditors. From the figures showing the total numbers of insolvency applications in the other districts of the Presidency (Statement E-2, Civil Justice Report) it is probable that wider inquiries would show similar results. The inference is that in only a moderate proportion of the total number of appropriate cases does the debtor give security to petition in insolvency in lieu of going to jail ; and the reason for this is, besides the general obstacles I have referred to, and the omission of the courts to bring the matter to the judgment-debtor's notice, the difficulty of providing the necessary security. The debtor has to give security not only that he will apply within one month to be declared insolvent, but also for his appearance in any proceeding upon his application or upon the decree as the time under execution ; and it is not easy for the ordinary debtor, when suddenly arrested, to find such security. Further, this security is valid only so far as the particular decree under which it is given is concerned, and does not secure the debtor from arrest under another decree. If sureties are proffered, and objection is taken to their adequacy, the court has to adjourn in order to test them, and then arises the difficulty of providing for the intermediate custody of the debtor.

(2) Once a civil debtor is in jail he is ill-situated to take legal advice and get his petition in insolvency drawn up. If he does succeed in petitioning, he will be released as soon as an order of adjudication is passed. But before this can be done it is necessary to notify the creditors [section 12 (2)] and to hear the petition [section 14], with the result that months may elapse before the order can be passed. In Tanjore, for instance, the average interval between presentation of petition and adjudication is four months. Meanwhile the debtor cannot be released even on security. Accordingly as a means of enabling an insolvent to get out of jail Act III of 1907, as it now stands, is practically worthless. Out of 433 persons released from the Coimbatore Civil Jail during 1913 only 5 were released by this means, and none were so released in Tanjore out of 313 releases.

Turning to the Presidency Towns Act, the procedure under which I have already outlined, I find that an insolvent who presents his petition while in jail ordinarily secures his release within about a week. This is satisfactory, and no change is required. The difference in the two procedures is reflected in the statistics, 34 persons, out of a total of 499 prisoners, being released in Madras city by order of the Insolvency Court during 1913, compared with the Coimbatore and Tanjore figures given above.

14. The alterations in procedure which I recommend are as follows :—

(1) in place of the procedure laid down in section 55 (3) and (4), Civil Procedure Code, the court, on the appearance or production of a judgment-debtor, should make inquiry into his circumstances (I deal with the necessity for this inquiry in the next following paragraphs). If the court finds that the debtor is solvent and can pay the debt, it should send him to prison ; if it finds that he is insolvent and has no assets, it should release him unconditionally ; if it finds that he is insolvent and has assets,

or that his solvency is doubtful, and that the case is a fit one for insolvency proceedings, it should have power to release him on his giving security to present a petition within one month. I suggest this procedure for two reasons. In the first place cases will come before the execution courts in which it is a matter of some difficulty to balance the debtor's assets and liabilities, and it is preferable that the strict inquiry necessary should be made by the insolvency court. If that court finds that the debtor is not insolvent, execution against him will be resumed. Secondly, a large proportion of judgment-debtors are without any appreciable assets—I may refer for examples to cases Nos. 1, 2, 3, 9, 17, 18, 19, 27, 51, 52, 57, 78, 79, 80, 81, 96, 98—and it would be waste of labour to apply the insolvency procedure to their cases. Accordingly it should be the duty of the court to distinguish by its treatment between cases in which the only alternative to imprisonment should be an application in insolvency and cases in which such an application would be infructuous. In the former case release should be conditional, in the latter it should be absolute. A small amendment, I would add, is required to the Insolvency Acts to provide for cases (*vide post* paragraph 26) in which the debtor is served with a notice to show cause against arrest in lieu of being arrested. Section 6 of Act III of 1907 and section 14 of Act III of 1909 make the arrest of the debtor the criterion of his ability to present a petition. The fact that notice has been served on him should be an equally valid qualification.

(2). Under Act III of 1907, the insolvency court should have power to pass a protection order as soon as an insolvency petition is admitted. This end may be achieved either by assimilating the procedure to that of Act III of 1909 or, preferably I think, by making obligatory the appointment of an interim receiver, which under section 13 (2) is optional upon the court, and thereupon enabling the court to suspend all execution processes. Under the English law a debtor obtains protection as soon as a receiving order is passed. "In the case of a debtor's petition, if it is in due form and complies with the prescribed conditions, a receiving order is made as a matter of course, except where the petition is an abuse of the process of the court"\*; and "by the making of a receiving order . . . no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy may have any remedy against his property or person in respect of the debt, or may commence any action or other legal proceedings against him unless with the leave of the court, and on such terms as the court may impose."† There is already a proposal before the Government of India that a receiver should be appointed as a matter of course upon the admission of a debtor's petition; ‡ and the object in view will be attained if this is adopted and if it be ruled that, as under English law, the debtor is thereby protected. I think it follows that, if this alteration is made, the further change is necessary that an inquiry into the petitioner's conduct and circumstances should be held before adjudication; otherwise there is a risk that persons not truly insolvent would petition merely in order to secure release. It may also be necessary for the same purpose to empower the insolvency court to order that the release of the debtor in certain cases, *e.g.*, where the assets in the actual possession of the debtor (*i.e.*, excluding such things as debts owing to him and other outstandings likely to be fictitious) fall short of a certain proportion of his debts, should be on security pending adjudication.

These changes would go far to allow a freer resort to insolvency proceedings by judgment-debtors to whose circumstances the procedure is appropriate. At the same time, it is quite certain that there will still exist a large class of poor and uninstructed debtors who, as now, must be

\* Halsbury, Vol. II, Bankruptcy and Insolvency, para. 89.

† *Ibid.*, para. 94.

‡ *Vide* G.O. No. 2637, Judicial, dated 30th November 1914.

relieved in some other way. This brings out the urgent need for an alternative means of withholding imprisonment, a question which I will now examine.

15. *Powers of Courts to refuse arrest and imprisonment.*—On application being made for a warrant of arrest against a judgment-debtor, the court may avail itself of the provisions of law (order XXI, rules 37 and 40, Civil Procedure Code) which were introduced by the Debtors Act, 1888, already referred to ; that is to say, it may in the first instance issue a notice to the judgment-debtor in lieu of a warrant, and it may refuse to imprison him if upon inquiry it appears that he is in indigent circumstances and has not disposed of his property in a fraudulent manner. As I have shown in paragraph 8 *supra*, except for the abolition of imprisonment in the case of women, which does not concern us here, this provision was the sole issue to the lengthy deliberations which took place on this subject between 1881 and 1885. It was devised as a means of preserving the merely unfortunate debtor from jail, while enabling the courts to deal as heretofore with contumacy and fraud. The question how it has succeeded in this aim is therefore one of considerable interest. The answer to the question, derived from my own inquiries and from the replies of the judicial officers consulted (*vide* Appendix II), is simple ; as a means of discriminating in treatment between the pauper and the cheat this amendment to the law has been a complete failure. The power to issue a notice instead of a warrant is indeed occasionally availed of in the Madras Small Cause Court, and perhaps very occasionally elsewhere. A rule under the Presidency Small Cause Courts Act renders this course obligatory when the debtor is a servant either of Government or of a local authority or of a railway company ; and the concession is sometimes extended to persons of some status, *e.g.*, vakils, schoolmasters, Government pensioners, European or Eurasian employes in shops or offices. But the purpose in these cases is either to save the debtor's employer from inconvenience or to spare the debtor himself the indignity of a sudden arrest. The court does not go on to inquire whether the debtor can or cannot pay the decree amount. He is in fact imprisoned just as indiscriminately as before the provisions of the Debtors Act came into force. This is clear from the statistics relating to execution against the person for the decennium 1885—1894 (the Debtors' Bill became law on 23rd March 1888). I give these in the following table, as well as those for the last ten years, 1904–13 :—

| 1           | 2                                           | 3                                                             | 4                            | 5                                   | 6                                   |
|-------------|---------------------------------------------|---------------------------------------------------------------|------------------------------|-------------------------------------|-------------------------------------|
| Year.       | Total number of applications for execution. | Judgment-debtors arrested, but released without imprisonment. | Judgment-debtors imprisoned. | Percentage of column 4 to column 2. | Percentage of column 4 to column 3. |
| 1885 ... .. | 133,655                                     | 9,043                                                         | 1,387                        | 1·038                               | 15·33                               |
| 1886 ... .. | 136,225                                     | 9,435                                                         | 1,433                        | 1·052                               | 15·19                               |
| 1887 ... .. | 129,955                                     | 9,118                                                         | 1,419                        | 1·092                               | 15·56                               |
| 1888 ... .. | 125,188                                     | 7,126                                                         | 1,016                        | ·811                                | 14·25                               |
| 1889 ... .. | 122,109                                     | 6,450                                                         | 995                          | ·647                                | 15·42                               |
| 1890 ... .. | 124,738                                     | 7,638                                                         | 988                          | ·792                                | 14·66                               |
| 1891 ... .. | 120,994                                     | 6,750                                                         | 1,141                        | ·943                                | 16·90                               |
| 1892 ... .. | 133,671                                     | 7,287                                                         | 1,149                        | ·859                                | 15·76                               |
| 1893 ... .. | 141,978                                     | 7,926                                                         | 1,297                        | ·913                                | 16·36                               |
| 1894 ... .. | 149,285                                     | 8,180                                                         | 1,375                        | ·968                                | 17·68                               |
| 1904 ... .. | 272,345                                     | 11,629                                                        | 1,446                        | ·531                                | 12·43                               |
| 1905 ... .. | 281,601                                     | 12,243                                                        | 1,610                        | ·454                                | 13·15                               |
| 1906 ... .. | 299,745                                     | 13,447                                                        | 1,895                        | ·631                                | 14·09                               |
| 1907 ... .. | 312,823                                     | 14,143                                                        | 2,104                        | ·672                                | 14·86                               |
| 1908 ... .. | 307,619                                     | 14,935                                                        | 2,206                        | ·717                                | 14·77                               |
| 1909 ... .. | 308,941                                     | 16,453                                                        | 2,167                        | ·701                                | 13·17                               |
| 1910 ... .. | 321,815                                     | 17,042                                                        | 2,307                        | ·716                                | 13·53                               |
| 1911 ... .. | 330,995                                     | 16,933                                                        | 2,184                        | ·960                                | 12·90                               |
| 1912 ... .. | 346,991                                     | 17,969                                                        | 2,491                        | ·718                                | 13·86                               |
| 1913 ... .. | 349,923                                     | 19,168                                                        | 2,481                        | ·709                                | 12·64                               |

Comparing the six years (1889—94) immediately after the passing of the Debtors Act with the four years preceding, we find that the proportion of debtors imprisoned, compared with the number arrested and released without imprisonment, was actually higher during the latter period than during the former (*vide* column 6 above). In 1894 this percentage was 17·68, whereas in 1888 it was only 14·25. It is true that the same percentage for the last ten years is, on the whole, lower than that for the decennium 1885—94, but the drop is a small one, and as it did not synchronise with the change in the law it cannot be attributed to it. The figures given in column 5, viz., the percentages of debtors imprisoned to the total number of applications for execution, are not comparable as between the two decenniums, as the method of compiling the figures given in column 2 was changed in 1897. It will be seen that the number of judgment-debtors imprisoned (column 4) has gone on steadily rising.

The question<sup>1</sup> whether or not it is possible and, if possible, desirable to compel the courts to apply provisions resembling those contained in the Debtors Act before ordering imprisonment really lies at the root of the whole subject of imprisonment for debt, and I make no apology therefore for examining it at some length.

16. The reasons commonly given by judicial officers (*vide* Appendix II *passim*) for omitting to have recourse to these provisions are—

- (a) that they are not moved by the parties themselves to do so, and
- (b) that the provisions are unnecessary and their general application would in fact be objectionable.

The first of these reasons opens up a large question of principle. Is it permissible to a civil court to remain passive until one or other of the parties to a proceeding applies for action, even though it has the power to act spontaneously and even though passivity may entail hardship or injustice? I should not have thought that there was need to raise this issue had I not been accused, by one of the officers whose views have been obtained, of misunderstanding the functions of a court in this particular, and had ample proof not existed that, in execution matters at least, this is the habitual attitude of the courts. Once a decree is passed, most courts appear to regard themselves as relieved from anything other than mechanical or ministerial action, and do no more than respond automatically when excited to action by the decree-holder. This attitude, a survival no doubt, so far as execution proceedings are concerned, of the bad old system under which the execution of decrees was the duty of an officer, such as the sheriff, distinct from the court has, I submit, the most mischievous consequences. Especially is it indefensible in this country where the judgment-debtor is often so ignorant and helpless that if the court does not look after his interests assuredly no one else will. The responsibility of a court for the manner in which its judgments are enforced ought to be no less strict than its responsibility for the proper conduct of proceedings to judgment. It is true that execution operations against property do automatically discriminate between the debtor who has assets and the debtor who has none. Herein lies the virtue of the process, and restricted as it is by the exemptions allowed by section 60 of the Civil Procedure Code little need or opportunity for interference by the courts remains. It is otherwise with execution against the person. The courts have been given wide powers of control, and it is quite clear that the framers of the measure by which those powers were conferred intended that they should be used by judicial officers of their own initiative. Take the first of these provisions,—that a court may issue a notice to the debtor in place of a warrant. Who is going to apply for the exercise of this discretion? Not the creditor, certainly; and equally certainly not the debtor himself. It is conceivable that the other provision, that enabling a court to inquire into the debtor's circumstances, might be called into

action by the debtors themselves. Experience has, however, shown that this does not occur in practice, and those debtors who are most in need of protection,—the poor and illiterate—are the least likely to appeal for a hearing.

17. The contention that the courts ought to make these inquiries *suo motu* is further controverted by the argument that imprisonment for debt, though indiscriminately awarded, really only affects the contumacious or fraudulent debtor, because the creditor knows his own interest too well to pay for the confinement of a debtor who has no means of satisfying the decree. Opinions to this effect will be found in the correspondence printed in Appendix II. Facts in conflict with those opinions are, I venture to say, the outstanding feature of the special cases printed in Appendix I. An examination of these cases will throw light upon the point by showing whether there is any substantial proportion of instances in which, had some inquiry been held, imprisonment would have been refused. The answer to be given in each case must of course depend on the view taken as to the circumstances justifying imprisonment for debt. For the purpose of this analysis I will assume, broadly, that any debtor who had the means to pay his debt, and had omitted or refused to do so, was fairly deserving of imprisonment; and, conversely, that an insolvent debtor should not have been imprisoned. That is the English law, and it is the intention, though not the practice, of the Indian law. An important practical result of the difference is that whereas in England a necessary preliminary to arrest is what is known as a "judgment-summons," i.e., a summons to appear and show cause against arrest, in India a judgment-debtor ordinarily receives no notice of his creditor's intention to arrest him. In discussing these cases therefore the further question arises, how far was it fair to arrest the debtor without notice?

18. I will first pass in review a few of the cases in which imprisonment may be held to have been deserved. I can be brief on this point, because it is no part of my case that imprisonment is invariably unmerited. On the other hand several of the undermentioned cases support the argument against the total abolition of imprisonment, and show that, were such a course adopted, creditors would be deprived of the means of recovering their dues from wilful defaulters. In case No. 4 the debtor had means to pay the debt, and though a friend intervened as soon as he was arrested it was not an instance of an unfair burden being cast on a third party. The debtor would probably have settled the debt had notice of application for arrest been sent to him. The debtor in case No. 8 was solvent and his arrest may be specially justified on the ground that the creditor would have had difficulty in realizing his due by attachment. Case No. 10 is one of the common instances in which imprisonment compels the debtor to pawn or sell his wife's jewels. Cases Nos. 11 and 12 are others. Investments in jewelry, which if attached is claimed by the wife, is one of the commonest ways of defrauding a creditor, and those who practise it can only be successfully countered by arrest. Case No. 13 is one of those in which attachment of the undivided property would have given rise to troublesome questions, whereas arrest was immediately effectual. A notice to show cause against arrest would probably have been equally effectual, as it is unlikely that the debtor would either have absconded or raised a false plea of insolvency. Much the same remarks apply to cases Nos. 14 and 22, where the debtor paid on learning that a warrant was in force against him.

The first of the Coimbatore cases (No. 40) is exceptional inasmuch as it relates to a debtor who, while able to pay the debt (quite a small one), preferred to undergo the full term of imprisonment rather than do so. Case No. 43 was rather a hard one. Though the debtor was not without resources, it is questionable whether imprisonment should have been allowed. This case and a number of others (e.g., Nos. 39, 42, 44, 45, 49, 56, 62, 68) show the penalties that persons expose themselves to who sign

as sureties for others. I do not wish to suggest that the law which makes a surety liable equally with the principal is unjust. A surety presumably signs with his eyes open and must take the consequences. It is, however, a system of raising money which often involves the surety in disaster, and I feel sure that if some restriction is placed on imprisonment it will be less resorted to, because the creditor will then obtain less trustworthy security. A point to remember is that although the law entitles a surety to recover as against his principal, he can get no redress of any kind for the harm caused to him by imprisonment, however unmerited it may have been. Case No. 49 is interesting as showing how an unscrupulous debtor may abuse the surety system. Here both principal and surety were in a position to pay, and the court's action was justifiable. Cases Nos. 53, 54, 55, 58, 59 and 95 are other instances in which solvent debtors were committed to prison. A noticeable point in connection with many of these cases is that execution against the debtor's property would probably have succeeded, had the creditor cared to resort to it.

19. Let us now look at some of the cases in which, on the principles laid down in paragraph 17 above, imprisonment should not have been permitted on the ground that the judgment-debtor was unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable in instalments, the amount of any instalment thereof (order XXI, rule 40). It is to be observed that it is not necessary to find that the debtor was wholly without resources; it is sufficient to show that he was not in a position to meet the demand outstanding against him. Cases of this character form a considerable proportion of the total of those selected for inquiry, but as I have dealt with each in the *commentary* appended to it I need not make my examination here exhaustive.

Among the Madras cases, No. 3 is typical of several others occurring in the series. A butcher earning a monthly wage of about Rs. 20 is arrested for a sum of Rs. 86-4-0. It was wholly out of his power to pay the entire sum, and the creditor kept him in jail for a month and a half before agreeing to accept a payment of Rs. 10 on account and the balance in monthly instalments. This arrangement the debtor failed to comply with, and he therefore became liable to further process. I submit that a course preferable to that actually followed would have been for the court, either at the time of passing the decree or when execution was applied for, to have inquired into the debtor's circumstances and to have ordered repayment of the debt in instalments proportioned to them. If thereafter the debtor failed to pay any instalment, it would have been fair to imprison him. As the case was dealt with, he was imprisoned for six weeks for a sum which it was quite out of his power to pay. Case No. 6 is somewhat similar. A retired Havildar, dependent on a pension of Rs. 5, was arrested for a sum of Rs. 94-13-3, kept in jail for twenty days and released on a similar arrangement for payment by instalments. He ought not to have been sent to jail for failure to pay the whole sum due, and the order permitting him to pay by instalments might have been made before execution was ordered. The exorbitancy of the interest—75 per cent—would have supplied an additional justification for such a course. Case No. 20 is a closely parallel one. In case No. 7, however indefensible the contraction of the debt may have been, at the time the debtor was arrested his only means of paying the one debt was by incurring another. Case No. 15 is one more in which inquiry would have shown the court that the debtor was unable to pay the whole sum in a lump. Imprisonment here lost the debtor his employment, and to obtain his release he agreed to make monthly payments evidently beyond his means. Case No. 16 is similar to case No. 3 discussed above. In case No. 18 the debtor, who signed the promissory note as surety, underwent the full term of imprisonment (six months) and, so far as can be ascertained, was without the means to pay. Case No. 30 shows the ill-effects of extended credit. Here the debtor, who had evidently become reckless

borrowed Rs. 100 at 75 per cent, with the ultimate result that a relative had to pay nearly four times that sum in order to release him. Case No. 37 shows the uselessness of continuing to imprison a debtor who has given up all desire to pay his debts, and who, in fact, seems to prefer to live at his creditors' expense.

20. Among the Coimbatore cases, No. 38 is one of a fairly common class in which the debtor has property which is however encumbered to the full extent of its value. When arrested and imprisoned he has no means to pay the debt. He is in fact insolvent, and the proper course is a petition in insolvency. Imprisonment in such a case is likely to have little effect,—in the present instance it failed altogether—but, if a debtor who has assets chooses to hold on to them instead of placing them in the receiver's hands, I think he fairly deserves imprisonment. It is to meet cases of this type that I have proposed to give the court discretion to release either absolutely or upon the condition that an insolvency petition is filed. If then a debtor proved to possess property omits to petition in insolvency and the court cannot satisfy itself as to his exact circumstances, let him go to jail. Such a case as that last cited is certainly not on a par with one in which it can be shown that the debtor is so impoverished that he cannot meet the bill. Case No. 39 resembles No. 38 in that the debtor has some property which is fully mortgaged. Case No. 42 is one of the many cases in which a surety suffers on behalf of his principal. The debtor underwent the full term of imprisonment and seems to have been genuinely unable to pay the debt, small though it was. I think that in such a case a court might well refuse to sanction attachment of the person, in spite of the existence of a little fully encumbered property. Each case ought, in fact, to be dealt with on its merits, the law being so framed that the court is bound to make inquiry and to use its discretion. Case No. 44 will, I believe, convince anyone who reads it that indiscriminate imprisonment is apt to cause an undue amount of hardship. If this old man had embezzled fifty rupees, instead of backing a bill for that amount, he would not have been dealt with more severely. At least he would have been entitled to some inquiry into the facts. In case No. 52 we have another instance of the blundering action of the present procedure. The debtor spent his six weeks in jail, and there was at no time any prospect that he would be able to pay the decree amount, as the court could surely have ascertained had inquiry been made. Such a case disproves the comfortable theory that creditors render any such inquiry unnecessary by imprisoning only recalcitrant debtors; while it is something of a mockery to say that the insolvency provisions afforded a means of escape. As the debtor replied when the question was put to him, he knew nothing of those provisions, and he was not in a position to obtain legal advice on the point. Case No. 56 on the other hand is interesting as being one of the few in which the debtor obtained liberation on giving security to present an insolvency application, and did in due course present it, but withdrew it at the instance of his relatives, who evidently regarded such a course as discreditable. In the commentary on this case I have noted on its legal aspect. Case No. 57 is another instance of arrest for a sum which it was not within the debtor's means to pay, a fact which the creditor acknowledged by omitting to pay subsistence allowance for the second month. Had the court been competent to order payment by small instalments (say one rupee per mensem) it is possible that the creditor would have realized something instead of nothing. Case No. 62 illustrates a point I have already drawn attention to,—the readiness of moneylenders to accept sureties without in all cases, inquiring into their substance. Here the unfortunate surety remained in jail for over a month though he was quite unable to pay. Cases Nos. 68 and 74 are of a similar description.

21. Cases in which persons not legally liable for the debt are involved, if we exclude those in which the money is really the debtor's, held *benami*

by the ostensible payer, almost necessarily fall within the class of cases in which imprisonment was not justified, but they are sufficiently a feature of the present procedure to deserve separate notice. Such cases range from instances where the payment is made from purely disinterested or sentimental motives, and repayment is not probable or hoped for, to other instances where the assistance given is merely a temporary accommodation obtained on a more or less definite agreement to repay. Cases Nos. 1, 2, 5, 9, 29, 30, 36, 61, and a number of others are illustrative of the former species. In each of these instances the money was paid, generally by a near relative, to save the debtor from imprisonment, and in each the debtor's circumstances render it unlikely that he will be able to refund the amount spent. There is no question but that the pressure exerted by arrest exacted these payments. A worse type of case is that in which a friend or relative, unable to satisfy the decree in cash, contracts a debt either to the decree-holder or to another money-lender. In case No. 46 an original debt of Rs. 200, incurred by a son, is sued upon, and is shouldered by the father to save him from imprisonment. The father is in turn sued on the debt, now grown to Rs. 321-8-0, and is imprisoned for a month. Finally another relative has to come forward and pay the amount of the second decree—Rs. 443—though he was in due course repaid. In case No. 19 the imprisonment of an indigent surety forced his son to execute a promissory note in favour of the plaintiff for more than the amount entered in the warrant. He will probably be sued and imprisoned in his turn. Case No. 96 is another in which the plaintiff accepts a promissory note from relatives in satisfaction of the decree. Of a similar character are cases Nos. 98 and 99, the former of which, in particular, shows how the imprisonment of persons who cannot pay may lead not to the extinguishment but to the propagation of debt.

22. Cases in which the temporary assistance of a friend is availed of are fairly numerous, but I do not wish to lay much stress on them if the assistance is given on the clear understanding that the sum advanced will be repaid. The intervention of a friend in such cases is most commonly due to the inability of the debtor, on a sudden arrest, to find the necessary money, and it would often be avoided were the courts to issue notices before having recourse to arrest warrants. Cases Nos. 4, 13, 47, 53 and 59 are instances in point.

23. Also deserving of special notice are cases in which the debtor, in order to satisfy the decree, contracts a fresh liability. Many of these cases are not clearly distinguishable from the class of cases last cited. In case No. 7 the debtor paid the first money-lender by borrowing from a second. In case No. 17 the debtor was arrested for Rs. 39-3-6 and obtained his release by executing a promissory note for Rs. 40 in the decree-holder's favour. Case No. 46 is another in which the creditor obtained a second promissory note, upon which he sued and imprisoned the executant. In case No. 60 the creditor was paid off by means of a loan obtained from a relative on a promissory note. In case No. 93 the debtor got a friend to effect his release by executing a promissory note in the decree-holder's favour. Case No. 98 is of a similar nature.

24. Certain of the cases obtained from the Tanjore district deserve special comment, as they throw light on the use made of imprisonment for debt by landholders against their tenants and agricultural labourers. I have extracted under case No. 78 a description, written by Mr. E. H. Wallace, I.C.S., the District Judge, of agrarian conditions in that district. The mirasidar is frequently in difficulties for want of labour, especially now that emigration to Ceylon and the Straits Settlements draws off so much of the available supply. To meet this difficulty he attaches his tenants and labourers to his land by a system of loans given either at the start to pay off debts and meet the cost of settling, or on occasions involving unusual expense, such as marriages. So long as the tenant remains,

the loan is not pressed, and frequently interest is not charged ; but if he leaves his landlord the bond, with the interest it bears, is sued upon, and the debtor harried until he returns to service. Most of the Tanjore cases selected show this system in operation, and though these cases were picked out from among a number of others which conformed to the usual type, it must be clearly understood that they represent a state of things by no means rare or exceptional. It was a matter of some difficulty to select them from the jail records, as these records contain little to show what was the nature of the case ; but I have no doubt that a more prolonged search would bring to light numerous instances of the state of affairs of which these cases are typical. In case No. 78 the creditor was baulked by the debtor's brother, who paid the decree amount. In case No. 79 the motive for imprisoning the debtor was almost certainly in order to bring him back to the land, probably as a cooly, as he was imprisoned for over five weeks although he had no resources whatever. Case No. 80 is similar. In case No. 81 the debtor preferred to serve his full time in jail to returning to his late employer's service. In case No. 83 the debtor, a pauper, was kept in confinement for two months and a half in respect of an advance of the kind described above. Case No. 85 shows how a landlord is content to let a debt go on growing so long as the debtor remains his tenant. Upon the application of imprisonment the debtor's sons and nephews take over the burden. Case No. 87 speaks sufficiently for itself, and cases Nos. 89, 91 and 92 are of a similar type.

I believe that these instances, were there no other evidence, would form a sufficient indictment of the existing practice of imprisoning for debt to call for an effectual remedy. Their leading characteristics are a decree based on questionable evidence and used for still more questionable purposes. No wonder that the labourer prefers to emigrate rather than submit himself to the tender mercies of the mirasidār. If the landlord complains that, without some means of coercing his tenant, his land would pass out of cultivation, let him convince the Government that special legislation, to include a penalty for criminal breach of contract, is called for. Rather than tolerate such a perversion of a legal process as now takes place, it would be better to abolish imprisonment for debt altogether in the case at least of agriculturists.

— 25. Those of the cases from the Nilgiris which call for separate mention relate to debts contracted by Badagas. The Badaga community affords only one example—perhaps not a very extreme one—of the manner in which a more or less primitive and uninstructed agricultural class is affected by the facilities for borrowing provided by the professional money-lender. The leading characteristics of such ryots are thriftlessness and ignorance. They are so incapable of looking after their own interests that they involve themselves in debt without even knowing what are the terms on which the loan was given. Badaga civil prisoners whom I have questioned have been unable to tell me the sum for which they were proceeded against or the rate of interest charged on the loan. "It is written in the bond," they say, or "the sowcar will be able to tell you." The advances are commonly made in grain, to keep the family going between one potato crop and another, and the sowcar alone keeps a record of them. When the account reaches a certain point, the grain is commuted into money at such rate as the money-lender chooses, and the Badaga is made to sign a promissory note for the sum. Sometimes the debt is defrayed from the next potato crop. If not, it goes on accumulating or is sued upon. Frequently the money has to be raised by selling or mortgaging land. It is easy to imagine what sharp practices go on when the parties to a transaction are a Rowther, Marwari or Labbai on the one side and a Badaga on the other. Accounts are falsified, credit is not given for payments made either before the decree or on execution, interest is not reduced in consideration of such payments, bonds are drawn at variance with oral agreements, bonds are renewed in order to

secure compound interest and the old bonds are still acted upon, *ex parte* decisions are procured by contriving the defendant's absence. The remedy of these abuses it is not within my province to discuss. I mention them only to show that when we are dealing with an agricultural community composed largely of illiterate members, the case for protecting the debtor is a strong one. Case No. 106 is a typical one. The Badaga ran up an account in ragi, this became transformed into a promissory note for Rs. 17, bearing interest at 75 per cent. (quite a common rate in these hills), and eventually the debtor was arrested for Rs. 54-7-0. To secure his release and pay this debt he had to borrow anew. In case No. 107 the rate of interest was lower, because jewels were pledged. The debtor had nothing but debts, and his son had to involve himself in order to release him. Cases Nos. 102, 103 and 104 relate to debts incurred in connexion with "chit funds." If any inference can be drawn from the two latter cases, it is that these affairs are used as a means of fleecing the unwary Badaga. In each instance the promissory note was assigned to a Rowther firm, which sued upon it and possibly was the real promoter of the "fund." Cases Nos. 101 and 105 are others in which the conduct of Rowther creditors is impugned. In the former the Badaga debtor had to acknowledge a debt he believed, but could not prove, to be fictitious. The victim in the latter was himself a Rowther.

These few cases, supplemented by the Tanjore cases, and by more than one of the Coimbatore cases go to show that the petty agriculturist, whether ryot or labourer, is frequently cheated and still more frequently oppressed by his creditor. There is no class so much in need of protection when the time comes to execute decrees. Not until the courts are compelled to exercise discrimination in the case of each and every application for imprisonment will the desired relief be afforded.

26. *Issue of notice in lieu of warrant.*—So much objection is taken by judicial officers to the proposal that in all ordinary cases a notice should be served on the judgment-debtor before issue of an arrest warrant that it is worth while to consider what would have been the probable effect of such a course in some of these cases. The arguments for and against the procedure are fairly obvious. On the one hand there is the risk that the debtor will abscond or conceal his property; on the other that sudden arrest and imprisonment not only, in many cases, lay an unmerited indignity on the debtor but also prejudice his ability to obtain money to pay the debt or otherwise to settle the matter. The argument based on the fear that the debtor will abscond, which unfortunately cannot be tested by a reference to these cases, does not, I believe, bear looking into. Assuming that a proportion of debtors will not appear in obedience to a notice, is the objection a serious one provided that the court have power, as provided in order XXI, rule 37 (2), Civil Procedure Code, thereafter to issue an arrest warrant? In the first place, the debtor who will abscond on receiving a notice to appear will generally succeed, even in present conditions, in keeping out of the way of an arrest warrant. Not many debtors—least of all those possessing property and therefore fairly amenable to arrest—will take to flight permanently. Creditors do not show such promptitude in taking out execution that any extra delay thus caused would seriously affect their interests. The analogy of criminal procedure seems to me to show that these fears are largely groundless. On the other hand it is certain that the power of arrest is constantly abused. The more inconvenient or humiliating the appearance of the bailiff, the better chance the creditor has of bringing his debtor to terms. I cannot do better than quote the remarks of the District Munsif of Kurnool on this point\*, though I do not accept the remedy he proposes:—

"This power is sometimes used to wreak private vengeance by insulting a respectable man. If the arrest warrant goes to his house,

\* Appendix II, page 78 *infra*.

here is little difficulty, as he can easily pay up. But he is often arrested at out-of-the-way places where he has gone to attend a marriage or a similar social function, or when he is going on a journey. He is brought to the court-house before he can get back home to gather money and pay up. The insult is complete and he can have no remedy against the creditor for he was within his legal rights."

I may add that the issue, as a matter of course, of an arrest warrant is perhaps defensible as part of a system of indiscriminate imprisonment for debt, as such. All that needs to be known is known, that the man is a judgment-debtor. But it surely becomes quite indefensible if imprisonment is to be restricted to persons who wilfully evade payment.

27. It may be said that virtually in all cases in which imprisonment was not justified a notice should *ex hypothesi* have issued to show cause against such a course. If arrest and imprisonment was an unsuitable form of treatment, arrest without warning was an aggravation of the error. I will accordingly only mention here one or two instances in which the ill-effects of a surprise arrest are clearly visible. In case No. 45 the debtor was a man of substance and respectability got himself involved with four others as a surety for a loan of Rs. 200. The creditor chose to arrest him in preference to his co-defendants, no doubt because he was the most likely to respond to pressure. When arrested for a sum of Rs. 466 he paid what ready money he had available—Rs. 190— and asked for an opportunity to raise the remainder before being sent to jail. This was refused, and accordingly he had to remain in jail until his wife could sell some property and get him released. Here there was no fear that the debtor would abscond. On the other hand had he been directed by notice to show cause against arrest it can hardly be doubted that he would have settled the matter. Case No. 43 is a similar instance of the sudden arrest of a surety who, if he had received notice, would probably have satisfied the creditor in the same way as, if the debtor's story is true, he actually was satisfied. In case No. 4 a friend had to intervene to save the debtor from imprisonment where, if the court had issued notice of application for arrest, the debtor himself would probably have found the money. Case No. 47 is of a like character. Case No. 49 is interesting as being one of the few in which imprisonment failed, and *a fortiori* issue of a notice would fail, to extract money from a man actually able to pay. The debtor in case No. 65, a ryot in good circumstances, spontaneously complained to the inquiring officer that his creditor arrested him at a disadvantage in order to insult him by sending him to jail. These cases are enough to show that there is frequently ground for issuing a notice to the debtor. Such a course would often have the effect of saving from imprisonment a man who only requires a few days to collect money to realise the debt, and who would do so if he knew that the notice would otherwise shortly be followed by a warrant. If the debtor cannot pay, he will be in a better position to prove his disability if he has some intimation of the proceedings to be taken against him, and if he comes before the court a free man instead of a prisoner. I would accordingly make it compulsory on the courts to adopt this procedure, unless for reasons to be recorded, *e.g.*, on affidavit by the creditor that the debtor is about to remove from his dwelling or place of business, or is keeping out of the way to avoid service, issue of a warrant is considered necessary.

28. *Summary of results.*—Let me now attempt a rough summary of the evidence afforded by these cases as to the merits of the existing procedure of imprisoning debtors. I will refer in the ensuing analysis only to the 37 Madras and the 40 Coimbatore cases, in order that no question of special selection may arise. It should be remembered, in considering the results, that these cases relate to all stages of proceedings against the person, and do not refer exclusively to debtors actually committed to jail. Applying the test which I have already adopted, I find that out of this total of 77

cases, in 31 cases (Nos. 4, 8, 10, 11, 12, 13, 14, 22, 24, 28, 33, 34, 35, 40, 45, 46, 47, 49, 53, 54, 55, 58, 59, 63, 64, 65, 67, 69, 71, 72, 73) imprisonment may be justified on the score of means, in 5 cases (Nos. 31, 32, 43, 48, 70) the question is doubtful, while in the remaining 41 cases (Nos. 1, 2, 3, 5, 6, 7, 9, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 29, 30, 36, 37, 38, 39, 41, 42, 44, 50, 51, 52, 56, 57, 60, 61, 62, 66, 68, 74, 75, 76, 77) a court applying the provisions of order XXI, rule 40, Civil Procedure Code, would have refused to imprison. Even if we assume that in some of the cases last mentioned the whole truth has not been ascertained, that some of these debtors possess concealed assets or have made away with property since the decree was passed, the result is, I submit, a remarkable exposure of the existing system. Turning to the 31 cases in which I have classed the imprisonment as "deserved"—a fact which strikes one is that in quite a number of them the creditor would have found property to proceed against. I will not attempt any strict enumeration of these cases, because the matter cannot in every instance be decided; but cases Nos. 4, 8, 12, 14, 24, 34, 45, 49, 53, 63, 64, 65, 67, 69 and 73 among others, appear to me to be of this character. In basing any conclusions on the number of cases in which imprisonment was "deserved," therefore, we must not lose sight of the fact that this description is only applied with reference to the debtor's circumstances and does not show that he had any intention of absconding or concealing his property. Nor does it mean that imprisonment was justified as the sole resource of the creditor.

The 41 debtors whom I have classed as undeserving of imprisonment include, besides absolute paupers, persons, like those in cases Nos. 3, 5, 6, 9, 15, 16, 19, 25, who earn enough money to live on, but have no property sufficient to meet the decree amount, or whose property would be exempt from attachment under section 60 of the Civil Procedure Code. These persons will often be able to discharge a decree debt by small instalments, but they would not be imprisoned in England for the lump sum, and I can see no justification for so imprisoning them in India. A striking feature of these cases in which imprisonment was "undeserved" is the high proportion of instances in which the decree was satisfied. In 14 cases (Nos. 1, 2, 5, 7, 9, 19, 23, 29, 30, 36, 50, 51, 60, 61) the creditor obtained full satisfaction, either in cash or bond; in 8 more (Nos. 3, 6, 15, 16, 17, 20, 25, 27) something was paid towards the decree amount; while only in the remaining 19 (Nos. 18, 21, 26, 37, 38, 39, 41, 42, 44, 52, 56, 57, 62, 66, 68, 74, 75, 76, 77) was no payment made at all. If the circumstances in which these payments were made had not been inquired into, the high proportion of realizations might have been used, as it often has been used, as an argument in favour of the existing procedure. I hardly think that it will be so used by anyone who reads the facts in detail. Where an instalment only was paid, the case was generally one in which the court should have ordered this course before the debtor was imprisoned. The creditor himself, in fact, acknowledged the inability of the debtor to pay the sum in respect of which he was imprisoned. Let us now look further at the 14 cases in which the plaintiff certified full satisfaction. The following is a statement of the manner of payment in each case:—

| Case No. | Method of payment.                                                        |
|----------|---------------------------------------------------------------------------|
| 1.       | Payment by relative—no agreement to repay.                                |
| 2.       | Payment by third party—no agreement to repay.                             |
| 5.       | Payment by relative—no agreement to repay.                                |
| 7.       | Payment by borrowing with relative's assistance.                          |
| 9.       | Payment of relative : debt not likely to be repaid.                       |
| 19.      | Son of debtor executed promissory note to decree-holder.                  |
| 23.      | Payment by sale of property not yet paid for.                             |
| 29.      | Payment by relative—repayment improbable.                                 |
| 30.      | Payment by relative—repayment improbable.                                 |
| 36.      | Payment partly by relatives and partly by further borrowing.              |
| 50.      | Payment by relative—indefinite promise to repay.                          |
| 51.      | Debtor paid by sale of property—creditor waiving over two-thirds of debt. |
| 60.      | Payment by relative to whom debtor executed promissory note.              |
| 61.      | Payment by relative—no agreement to repay.                                |

The facts thus tabulated speak for themselves, and show clearly that the mere circumstance that full satisfaction was obtained is no criterion of the fairness of the order.

29. I do not think that, in the face of the evidence supplied by these cases, anyone can assert that, except in an inappreciable number of instances, none but fraudulent or recalcitrant debtors are imprisoned. The facts are, indeed, so much in conflict with this view that they might be employed for the purpose of discrediting imprisonment altogether. I do not, however, advocate the entire abolition of imprisonment. It would certainly raise a storm of opposition in the same way as opposition was raised in 1882 when the Government of India asked for opinions on the general question of abolishing imprisonment for debt. Many of the predictions made by the officers then consulted would, I believe, turn out to be erroneous, just as the evidence which I have collected disproves many of their assertions regarding the effect of imprisonment. At the same time it is quite true that there are special circumstances in this country which make the collection of debts difficult. In England and other European countries it is rare that a man, however humble his position in life, has not a little furniture or other attachable goods that he values, whereas in India one can manage with a few shreds of clothing and one or two cooking pots. Any spare cash is invested in jewelry, which is easily saved from the creditor's grasp. Further, there are the facilities created by *benami* transactions and jointly held property for the evasion of obligations. Accordingly, I advise the retention of imprisonment, but its retention with such safeguards as will effectually compel the exercise of discrimination in sending debtors to jail. The conclusion is unavoidable that the creditor is not a fit person to be entrusted with the task of judging of his debtor's circumstances. There may be a few instances in which he refrains from applying for an arrest warrant because the judgment-debtor is indigent,—they must be few because it is clearly no use, even to sue a debtor who is known to be without resources. In the great majority of cases warrants are applied for irrespective of the debtor's circumstances. Some debtors are able to pay the money to the bailiff as soon as he confronts them with the warrant, or even before execution is attempted. Others have it ready by the time they are produced before the court, or manage to effect a composition with their creditors. The remainder go to jail, and either depend on their friends to raise the money from their property, or by borrowing, or otherwise, or remain in jail long enough to exhaust the creditor's patience or to serve the full period or, in a small proportion of cases, obtain release by applying in insolvency. It is quite true that something of the nature of an automatic action takes place. Those who can pay rarely go to jail for long, and those who cannot seldom have to undergo the full term. But as a general rule the effect of arrest and imprisonment, as many of the special cases show, is too powerful. While it is exceedingly rare for a man who has available assets—many have assets which they cannot avail themselves of so long as they are in jail—to prefer imprisonment to payment, quite commonly the creditor gets his decree satisfied from some source he is not entitled to draw upon. He applies the screw, in fact, until he is pretty certain that such sources are not available; and as he frequently has but an imperfect acquaintance with the debtor's affairs, he must err on the side of safety, that is, of severity, and occasionally keep in confinement a man who has no means whatever of paying. These considerations go to prove that it is not safe to excuse the courts from making an inquiry on the ground that the decree-holder exercises a discretion which in practice leads to the same consequences. The main distinction is that the decree-holder does not care from what source the money comes so long as it is paid, while it is the duty of the court to hold only the signatories of the bond liable, and to refuse to imprison them if they can show that they are themselves unable to meet the obligation. If they are in fact in possession of property, it is still

open to the decree-holder to proceed against it. The effect of imprisonment, as revealed by the cases inquired into, was so accurately estimated by Sir Courtenay Ilbert when moving for leave to introduce the Debtors Bill in 1886 that I venture to reproduce here what he said :—

There are, in my opinion, two principles which ought to be observed in every law of debtor and creditor. The courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessities of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all. These principles appear to me to be as applicable to India as to England. The Code of Civil Procedure recognizes one of these principles by exempting from seizure for debt the debtor's bare means of subsistence. But this recognition is nullified by the refusal to adopt the principle of exempting the debtor's person from seizure. Of what use is it to reserve by law to the debtor the bare necessities of life, when he can be compelled to give them up by the threat of imprisonment? By those who advocate the retention of the present system much reliance is placed on the very small proportion of actual imprisonments to warrants of arrest; and the inference drawn from this proportion is that the law, though harsh in theory, produces no hardships in practice. But my belief is that, in the great majority of cases, exemption from arrest is purchased either by renewal of bonds on extortionate terms, or by surrender of property which the law has exempted from seizure, or by surrender of property which does not belong to the debtor at all but to his relations or friends. In other words, the law enables a creditor to do indirectly what it forbids him to do directly.

Perhaps the most important lessons to be learnt from the special cases is that the admittedly small proportion of cases in which persons are actually imprisoned, compared with the number of arrest warrants issued, is no test of the satisfactory working of the system. It only shows that imprisonment is so disliked an alternative that debtors and those interested in them are ready to make great sacrifices in order to avoid it. If, *per impossible*, the thumbscrew were part of our legal machinery for the recovery of debts its apologists would be able to claim a very high proportion of successes, and would point triumphantly to the large number of cases in which decrees were satisfied without resort to the instrument, just as the same virtues are now claimed for imprisonment.

30. The objections commonly urged against the proposal that provisions resembling those introduced by the Debtors Act, 1888, should be made of general application are—

- (a) that the procedure will unfairly favour the debtor as compared with the creditor,
- (b) that the difficulties in the way of eliciting the truth regarding a debtor's circumstances are so great as to be insurmountable in practice, and
- (c) that the additional work which would be thrown on the courts would be prohibitive.

(a) It is not, I think, unfair to say that if judicial officers, as a body, have a bias it is in favour of the creditor. I believe that I started on this inquiry with some such feeling myself. The doctrine of the sanctity of a contract has much to do with this, and when a contract is converted into a decree it becomes, to some minds, sacrosanct. Further, in execution proceedings there is no doubt that the judgment-debtor gives a great deal of trouble. The interests of the court coincide with those of the creditor, to get the matter disposed of, while his rascalities are rarely so apparent as are the debtor's defaults. I am far from saying, in retort, that all creditors are grasping Shylocks and all debtors the victims of their oppression, though I doubt whether India is exceptional, among the nations, for the moderation of its money-lending fraternity. The question, if only we look at it broadly enough, is not one of creditor versus debtor in the simple sense that a lawsuit is plaintiff versus defendant. The debtor represents the community, while the creditor, where he is a professional money-lender, is only a servant or trader who ministers to the community's needs. It is fair to protect the interests of the community, even to the money-lender's loss or, indeed, ruin. It would be indefensible to allow the community to be harmed in order that the money-lender

should be advantaged. If the results of his activities were wholly evil, he should be put down, in the same way as we put down law touts, body-snatchers and procurers. His activities do not however cause unmixed harm; they are productive of a mixture of good and evil, and the problem of the legislator is, so far as he can interfere at all with advantage, to retain the good and destroy the evil. But the problem must be worked out from the point of view of the borrower's and not of the lender's interests. The whole question is one of the legitimate limits of credit, and this can only be decided by a study of the debtor's needs and risks. If this question is rightly solved, the money-lender can, and indeed must, be left to take care of himself. This is the defence I would offer to the criticism I expect, viz., that the debtor's interests have been too exclusively considered. In point of fact, the argument based on the creditor's interests, if relevant at all, would be relevant only against a proposal to abolish imprisonment altogether. It entirely fails, in theory at least, against a proposal to limit imprisonment to the case of wilful defaulters; because *ex hypothesi* the only person whom the creditor wishes, or should wish, to imprison is the wilful defaulter. So far as the courts ought to safeguard the creditor's interests they will still be safeguarded.

(b) The objection to this reasoning which has been made is that the courts will not, in practice, be able to distinguish between the debtor who can pay and the debtor who cannot, and that attempts to do so will make it still more difficult for the decree-holder to execute his decree. On this point I would quote the observations of Sir Steuart Bayley when the Debtors Act was before the Council:

"It cannot be very difficult to satisfy the court, in the words of the law, in cases where the defaulter, having means to pay, has refused or without reasonable cause neglected to pay. That is all that has to be proved; and judging from the manner in which some similar clauses have been worked at home by County Court Judges, it does not seem that the judicial officers will have much difficulty in satisfying themselves on the point or in working the law so as to give sufficient relief to creditors."

I would add that our insolvency law proceeds on the assumption that such an inquiry is feasible. For my own part, if the courts should find, after due experience, that they cannot make a practical success of the procedure, I would prefer to see imprisonment for debt entirely abolished rather than that the existing practice should be reverted to.

(c) Regarding the third objection, the additional work thrown on the courts, I will give some grounds presently for the view, which cannot, I admit, be proved, that the restriction of imprisonment will lead to a reduction in the number of suits filed. As against this, it may be true that there will be an increase in execution work if the courts are only to imprison wilful defaulters. Opinions differ as to the extent of this increase. Mr. Waller, District Judge of Tinnevely, writes that "it would add enormously and, I think, quite unnecessarily to the work of courts, to impose on them the burden of deciding in every case whether the debtor has or has not concealed resources." The District Munsif of Tinnevely considers that if the court is to inquire *suo motu* into the circumstances of debtors before consenting to their imprisonment it will add immensely to its work, and possibly special execution courts will have to be established. I do not think that this forecast can be statistically supported. Let us assume, in order to estimate the maximum amount of extra work involved,

(1) that in all cases in which attachment of the person is applied for the court issues a notice to the judgment-debtor in the terms prescribed by order XXI, rule 37, Civil Procedure Code.

(2) that the inquiry which a court is empowered by order XXI rule 40, Civil Procedure Code, to hold is held in all cases before a debtor is committed to jail.

(1) The number of warrants issued against the person during 1913 by the seven courts within the Coimbatore Judicial district which have any considerable execution files was 11,191. The average number issued per court was therefore about 1,500. Assuming that notices were issued in these 1,500 cases, in lieu of issuing warrants in the first instance, it is to be observed that this work would by no means be all additional to that which is performed at present. In a certain number of these cases the debtor will appear in obedience to the notice, and in a further number he will come to terms with his creditor, just as at present he comes to terms as soon as he is arrested. It is only in the remaining cases that the court will have to procure his attendance by warrant. How numerous these cases will be it is not possible to say, but the extra work thrown on the process establishment, even in courts where the execution file is unusually heavy, will not I believe be very considerable.

(2) Next, as regards inquiries under order XXI, rule 40, Civil Procedure Code, it is clear that an inquiry of this nature will be necessary only in cases where the debtor fails to come to terms with his creditor and would, as matters stand at present, ordinarily be committed to jail. I will take the case of the Munsifs' Courts, as these courts alone are mainly burdened with execution work in the interior. During 1913, 1,683 persons were imprisoned under warrants issued by these courts, which numbered 156; the average number of persons imprisoned per court was thus 10·8. Assuming therefore that an inquiry is held into each such case, there is no reason to fear that the additional labour thus created will be excessive. It is true that the figure arrived at may undergo some variation. Debtors may be less willing to compound with their creditors if they see a prospect of being able to prove immunity from imprisonment, and so far as this will save them from contracting a second debt to pay the first, or their relatives from being laid under contribution, the result will be to the good. On the other hand, the number of applications for warrants against the person is certain to diminish if the decree-holder knows that he cannot imprison the judgment-debtor as a matter of course. On the whole we need not, I think, be deterred by the objection that the courts will be unduly burdened by having to exercise discretion in committing to jail. If relief is needed much of the work is of such a kind that it could be delegated to officers of the rank of Registrars. And, whatever may be the additional burden, it provides surely but a poor argument against removing a flaw in our judicial procedure which leaves the door open to grave oppression. In such a case disadvantages of this kind must be risked.

31. For the reasons I have given I am strongly of opinion that no judgment-debtor should be committed to the civil prison otherwise than upon an inquiry held by the court into his conduct and circumstances. It should not be left to the judgment-debtor himself to raise the issue of his ability to satisfy the decree, but the obligation should be laid upon the court to put the question to him and, unless he expresses his inability or unwillingness to tender proof, to hold the necessary inquiry. The burden of proof should, I think, ordinarily be upon the debtor, though probably this may be left to the court's discretion. In England the burden of proving means is usually upon the creditor. If it is shown to the satisfaction of the court that the judgment-debtor is without means to pay the debt, the court should disallow imprisonment. To this I would add the *proviso* to which I have referred in paragraph 14, that if the court, after inquiry, finds that the debtor is possessed of assets as well as of debts, and considers that the case could be most suitably dealt with by the insolvency court, it should have power to disallow imprisonment upon his giving security to present an insolvency petition within one month. If a debtor who has some property fails to comply with this requirement, it is fair to send him to jail.

32. *Intermediate custody*.—There is one further difficulty to notice in connexion with the proposal to hold an inquiry into the circumstances of

a debtor before committing him to jail, and that is with regard to his intermediate custody. Under order XXI, rule 40 (3), Civil Procedure Code, the court may, during the pendency of such an inquiry, "order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the court, or release him on his furnishing security to the satisfaction of the court." The first course is inconvenient where the court is at a distance from the civil jail, as are most of the Munsifs' Courts. As one of the District Munsifs consulted observes,\* once a debtor is put to the indignity of being sent to prison, he thinks he may as well stay there instead of being re-arrested and sent again to prison, in case he fails to prove poverty or other sufficient cause. The last course also frequently would present difficulties, as, if the adequacy of the security offered is disputed, the court will have to adjourn in order to examine it. Occasions will therefore frequently arise in which it will be desirable to commit the judgment-debtor to the custody of officers of the court, say of two peons or process-servers. This plan is stated by judicial officers whom I have consulted to work satisfactorily in practice, and there seems no reason why it should not be generally made use of. The cost of so doing would abide the result, that is to say it would be primarily debitable to the decree-holder, and would be recoverable from the debtor if he is committed to prison as a wilful defaulter. I would also empower a court to resort to this expedient irrespective of the consent of the decree-holder, whenever it considers that time should be granted to a debtor before committal to prison, whether for the purpose of filing an insolvency petition (as to which I invite a perusal of case No. 56) or of finding money to pay the decree debt. In such cases, the cost of providing the guard would of course fall upon the debtor. The District Munsif of Kurnool emphasises† the necessity for providing an opportunity in this way for the debtor to raise funds, and of allowing him, where need arises, to go to his village in the custody of process-servers for this purpose. If this is done, I feel sure that the courts will be relieved in many cases of the duty of inquiring into the debtor's circumstances, as so many of the special cases show that imprisonment is due not only to an unwillingness or ultimate inability to pay, but also very largely to the absence of all opportunity to find the means between arrest and committal. The provision of such an opportunity will be specially beneficial if it is not deemed advisable to require the courts to issue notice in lieu of warrant of arrest in all ordinary cases.

33. *Payment by instalments.*—At the time of passing its decree, the court may direct that the amount due shall be paid by instalments, with or without interest [order XX, rule 11 (1), Civil Procedure Code]; and at any time after the decree has been passed, it may make a similar order on the application of the judgment-debtor and with the consent of the decree-holder [order XX, rule 11 (2), Civil Procedure Code]. The discretion to award instalments at the time the decree is passed is a valuable one, and is fairly frequently made use of where the debtor is poor or the demand to be enforced a heavy one, though numerous cases can be cited in which this power might have been, but was not, exercised. The omission to do so is due to the attitude habitually assumed by the courts,—that it is not their business to ensure that their orders are reasonable except at the instance of a party to the proceedings: The power of awarding instalments at a later date, *e.g.*, on the production of the debtor under arrest, is perhaps still more valuable, but is almost wholly nullified by the necessity imposed by the Civil Procedure Code for securing the decree-holder's consent. The law applicable to the Small Cause Court, Madras, on the other hand, empowers the court at any time to make such an order "on notice to the decree-holder," that is to say after hearing his objections but not necessarily deferring to them [order XX, rule 10 (2), rules of the Small Cause Court,

\* Appendix II, page 81 *infra*.

† *Ibid*, page 73 *infra*.

1912]. I was so impressed by the beneficial operation of this provision in the Small Cause Court that in the memorandum sent to judicial officers I included a suggestion that it might be extended to all civil courts; and it will be seen that opinion is unanimously in favour of such a step. Let me illustrate by one or two examples how it would act. In case No. 20 the debtor was a retired sepoy dependent upon a pension of Rs. 4 a month. A decree for Rs. 29 was passed against him, and the court might then have made it payable by instalments. At that stage however the court was under no express obligation to go into the debtor's circumstances. The debtor was in due course arrested, and if the inquiry which I advocate had then been made he would have been found incapable of paying the lump sum, and clearly the appropriate order to pass was one for payment by instalments of eight annas or at most one rupee *per mensem*. An order of this character is particularly necessary where the debtor is in receipt of a small monthly salary or income, as for instance the butcher in case No. 3 or the vakil's clerk in case No. 25. Summary imprisonment is especially severe on clerks and other employés as it often results in loss of employment. Even in the case of cultivators an order for monthly payments will frequently be advantageous, as many of the poorer cultivators supplement their resources by working as coolies. Such an order is as likely to operate to the advantage of the creditor as to his prejudice, as there are many cases in which the debtor is wholly incapable of paying the full debt at once while he would be willing to pay in instalment proportioned to his means. In case No. 52, for example, the debtor, who had failed in the cloth trade and was working as a cooly at the time of execution, underwent the full term of imprisonment for a debt of Rs. 41-13-6 and paid no portion of it. It is quite probable that had the court inquired into his circumstances in connexion with the question of imprisoning him, and found the case a fit one for payment by small instalments, the creditor would have realised something. Of course, if the debtor then fails to pay according to the court's order, it must be presumed, unless he shows cause to the contrary, that he is recalcitrant, and he must go to jail. On this point the English law provides for committal on default of payment of each instalment, and this seems to be the only logical course. The power to award instalments must necessarily be left entirely to the discretion of the courts, and, as experience shows is the case with all such optional exercises of discretion, its application will vary much with the personality of the presiding officer. If only the courts can be brought to see that it is their duty, independently of any application by the judgment-debtor, to make use of it in all appropriate cases, a good many of the troubles which now lead to imprisonment will disappear.

34. *Duration of imprisonment.*—If the debtor neither satisfies the decree nor applies to be declared insolvent, he is committed to prison for a period of six months, or, if the decree is for an amount not exceeding Rs. 50 for a period of six weeks (section 58, Civil Procedure Code). The court has no power to reduce these terms, so that the debtor is detained until the expiry of the period unless either he comes to terms with the decree-holder, or is adjudicated an insolvent or unless the decree-holder fails to pay the subsistence-allowance. The numbers of civil debtors who were released from the jails at Madras, Coimbatore and Tanjore during 1913 on these several grounds are shown in the following statement :—\*

| Number of debtors released.                         | Madras. | Coimbatore. | Tanjore. |
|-----------------------------------------------------|---------|-------------|----------|
| (a) By expiry of sentence ... ..                    | 18      | 16          | 22       |
| (b) In default of payment of subsistence allowance. | 158     | 291         | 185      |
| (c) By order of the court ... ..                    | 65      | 87          | 63       |
| (d) On payment of decree amount into jail ...       | 58      | 34          | 38       |
| (e) By order of the insolvency court ... ..         | 32      | 5           | ...      |
| Total ...                                           | 331     | 433         | 313      |

\* These figures are not reconcilable with those given in para. 11 as the two sets relate to different areas.

Only 5·4 per cent. of those confined in Madras, 3·6 per cent. of those confined in Coimbatore; and 7 per cent. of those confined in Tanjore underwent the maximum period of imprisonment. In Madras 47·7 per cent., in Coimbatore 69·5 per cent., and in Tanjore 59·1 per cent. were released in default of payment of batta by the creditor. Probably in the majority of these cases the creditor gave up his attempt to squeeze his victim, though some may have been due to a settlement between the parties. Excluding those connected with insolvency applications, the remaining releases, 37·1 per cent. in Madras, 25·75 per cent. in Coimbatore and 32·2 in Tanjore, were due to a settlement of the creditor's claim—evidenced either by actual payment of the decree amount to jail or court, or by an application made by the creditor to the court (he having been satisfied either by a money payment, by a fresh bond or in some other manner). The average duration of detention, counting from the date of arrest, was in Madras 26 days, in Coimbatore 1 month and 19·62 days and in Tanjore 1 month and 12 days. I give these figures, because they were collected under my superintendence, though they are markedly at variance with those shown in statement E<sub>1</sub> of the Statistics of Civil Courts, 1913. Taking the number of civil prisoners released from all civil jails during 1913—2,914—and the daily average number of such prisoners—330·6\*—the average period of detention comes to 41·3 days. While it is true, as the figures which I have given in paragraph 11 above show, that the number of judgment-debtors against whom arrest warrants are issued is large compared with the number of those actually imprisoned, the average duration of imprisonment negatives the assumption that only the contumacious and fraudulent are kept in confinement by their creditors. It is against all reason to believe that persons who can pay their debts, and will not, are content to remain in jail for an average period of some six weeks. I may here mention a suggestion that has been made more than once to me, viz., that the maximum terms of imprisonment should be reduced, and, I would add, that the maximum should not vary according to the amount of the debt. It will be seen that only a small proportion of persons serve the full period of six weeks or six months as the case may be; and from the few instances recorded in the special cases one draws the conclusion that these cases rarely include those who are able to pay. Case No. 40 is the only instance to the contrary, and in this case the maximum was only six weeks; in cases Nos. 18, 41, 42, 44, 52, 81 and 82 the debtor was without the means to pay, and the larger the maximum term in such cases the greater is the oppression. Of course if some discrimination is to be used in sending debtors to jail, this argument will be much weakened. It is true, too, that the periods of average detention which I have given above do not appear to support a recommendation to reduce the terms. But it is to be remembered that if only recalcitrant debtors are to be sent to jail one certain result will be that this average period will be substantially reduced, because experience shows that the prisoners who remain longest in confinement are those who ought not to have been sent to jail at all. The English law prescribes a maximum term of six weeks for all ordinary cases of default, and I submit that an equal term will prove adequate in this country. Very few wilful defaulters will be found willing to suffer six weeks' imprisonment rather than pay. As the special cases show, nearly all those who can pay, even at the cost of borrowing or accepting charity, obtain release after a very few days in jail. As for prescribing a single term whatever the amount, in lieu of the existing two maxima, I believe, in the first place, that six weeks will be sufficient, whatever the sum involved; in the second place, there are so many factors in each case besides the magnitude of the debt that a rough mechanical rule based on that figure is sure to work badly. Viewed from any point of view, it is indefensible.

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\* Para. 8, Jail Administration Report for 1913.

35. *Limitation*.—Under section 48 of the Code of Civil Procedure, no order for the execution of a decree shall be made after the expiration of twelve years from the date of the decree ; and under article 182 of the first schedule of the Limitation Act (IX of 1908), not more than three years may elapse between one application for execution and another. So long as a decree-holder keeps his decree alive by an application made every three years or oftener, it is open to him to proceed against the person or the property of the judgment-debtor at any time within twelve years from the passing of the decree. Now in the first place, the condition imposed by the Limitation Act is quite insufficient. The object of requiring a decree-holder to press his claim not less frequently than once in three years is clearly to ensure a fair amount of diligence on his part. As the law is worded, however, he has only to present an application, and thereafter he may do nothing to prosecute it and still he saves limitation. The debtor may be, and frequently is, ignorant that any “step in aid of execution” has been taken. The proper course surely would be to require the decree-holder to show that he has not only made application, but that he has prosecuted it to the best of his ability, before allowing a fresh period to run. The intention of the law, as it now stands, is habitually evaded. Apart from this point, as from some instances which came to my notice the period of twelve years allowed by section 48, Civil Procedure Code, seemed to be excessive, in the memorandum which I addressed to judicial officers I suggested the advisability of reducing it in the case of debts of small amount. The replies received show much diversity of opinion. Some are in favour of such a reduction while others apprehend that the fraudulent debtor would in the main benefit from the change, and that it might result in the merely unfortunate debtor being more harassed by imprisonment than he is at present. A reference to the special cases will show that very few of the decrees obtained are dated earlier than 1912, which goes to prove that, generally speaking, three years is long enough to enable decree-holders to exhaust the resources of execution. Among the exceptions are case No. 6, where the debtor was arrested five years after the passing of the decree, its amount swelling meanwhile to more than half as much again ; case No. 51, where the delay may have been due to inability to find the judgment-debtors ; and cases Nos. 81 and 82, from Tanjore, in each of which the last execution was taken eleven years after date of decree against indigent debtors who were kept in jail for the full term. These few cases do not, I admit, afford very strong ground for recommending an alteration of the law. I believe myself, however, that it would be a change for the better to introduce some such scale as a maximum period of three years where the amount of the decree (excluding costs) does not exceed Rs. 100, six years where it does not exceed Rs. 500, and twelve years in all other cases ; execution against the person to be barred entirely on the expiry of three years from the date of decree. The latter proposal is that which more closely concerns my subject, and for which I would especially press. I would also support Mr. S. G. Roberts’ suggestion that decrees should cease to carry interest after six years. These conditions, applied subject to the reservation regarding wilful obstruction contained in section 48 (2) (a), Civil Procedure Code, ought to satisfy the requirements of decree-holders who show ordinary diligence in execution, while they would go further than does the present rule to prevent decrees from being held *in terrorem*. They would also reduce the work of the courts. If need be, the period of twelve years may be applied to decree debts of whatever amount, so far as insolvency proceedings are concerned. Mr. Krishnan brings to notice a matter that requires remedying, viz., that a Small Cause Court decree can be kept alive indefinitely so long as the conditions laid down in article 182 of the first schedule of the Limitation Act are observed.

## SECTION III

## GENERAL CONSIDERATIONS:

36. It is, I am sure, unnecessary to dwell at any length on the theoretical aspect of unrestricted imprisonment for debt. A law which enforces the contract when a man pledges his liberty in return for a loan is almost as hard to defend as a law which would give Shylock his pound of flesh in similar circumstances. One has not to read far to realize that no one who has considered the subject has had the temerity to vindicate indiscriminate imprisonment by an appeal to equity and moral justice. Those who advocate its retention do so on the ground that in India, at least, it is a practical necessity; those who attack it are unanswered when they impugn it as "the barbarous expedient of a rude age, repugnant to justice as well as to humanity,"\* or as discredited and abandoned in all civilized countries. Its effect on the individual cannot be other than harmful. When he ought to be working to clear his debts he is maintained in idleness, a pensioner on his creditor. Many of the evils of gregarious imprisonment attack him, the more readily for the lack of discipline and the absence of the moral antiseptic of labour. He spends the day lounging and gossiping with his fellow-prisoners. Every body of civil prisoners contains, besides mere unfortunates brought down by sickness, failure of business or other misfortunes, a number of swindlers and spendthrifts, men who have borrowed recklessly and men who are cheating their creditors by concealing their property. A civil prison is a school of improvidence and, as with criminal prisoners, the greater adepts infect the novices. Reformatory or deterrent action is likely to be negligible. It is more probable that familiarity with this species of imprisonment, and with the class of men who undergo it, will demoralize and degrade, and that those prisoners who are purely the victims of circumstance will leave the jail injured in mind and character, if not in body. Now that the indiscriminate committal to prison even of criminal offenders is discountenanced by enlightened opinion, surely the case must be a strong one that justifies sending civil debtors to jail.

37. I do not however wish to overemphasize this aspect of the matter, as everyone is agreed that imprisonment for debt is at best only the lesser of two evils. The other evil is, according to some prophets, the destructive effect which its abolition or indeed restriction would have on credit, an argument used often enough to require some notice here. Now the first essential of a sound system of credit is that only persons who have a fair prospect of being able to repay should succeed in borrowing. It should be the business of the creditor, before making a loan, to satisfy himself on this point by an inquiry into the borrower's financial position and prospects, and into the substance of his sureties, if any be offered. It is especially necessary in this country, composed so largely of agriculturists who continually need to be financed, that the system of credit which the law encourages should be a liberal one within these limits. The money-lender has been described as a necessary evil, and there can be no doubt as to the necessity for him. The evil that he causes is, I believe, almost wholly traceable to a single fact,—that he is willing to lend his money to nearly everyone who asks for it. The great defect of the existing system of petty credit, and one that has been forced upon my attention over and over again during my inquiries (*vide* the cases quoted in paragraph (9)) is that money can be borrowed with a fatal ease

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\* J. S. Mill.

and largely irrespective of the prospect of repayment. One may divide the loan transactions between moneylenders and their clients in this country into two fairly distinct classes, (a) loans made to men of some substance on ascertained security, and (b) loans made to men of little or no substance in a speculative manner. The first class of loans represents a sound system of credit. Ultimate default is rare, and a high proportion of the cases never come into court. If a decree has to be obtained, it is satisfied without proceeding to extremities. It is the second class of loans that gives all the trouble. A vast amount of this speculative business is done by moneylenders, especially by the less reputable among them. The principle on which they work is one of averages—they lend money freely at a high rate of interest in the confidence that, by the power to compel repayment given them by the civil law, a proportion of it sufficient to bring them in a fair profit will be recovered. The debtor who can be squeezed pays for the debtor who resists all pressure. It follows that it is transactions of this nature that swell the volume of litigation and lead to the immoderate use of coercive processes, especially warrants against the person. Sometimes one suit follows another on the same loan, as the debtor is forced to go on borrowing in order to satisfy each decree; and thus so far from terminating litigation, the power of arrest possessed by the decree-holder is a fruitful method of propagating it. The ability of the moneylender to carry on this sort of business is directly traceable to the power of indiscriminate arrest and imprisonment which the law, as it is at present administered, places in his hands. It is this power that enables him to dispense with proof of adequate material security, and to lend money systematically on note of hand alone, confident that in the large majority of cases when the screw is applied either the debtor or some one interested in him will pay up, or that he will be able to extort a bond in terms still more favourable to him than the preceding one, armed with which he will again be able to threaten his victim's liberty. It would be otherwise if property alone—the property of the debtor and his sureties—were relied on by the lender as security for the debt. Much reckless borrowing would be prevented, because the moneylender would insist on the pledging or exhibition of adequate security. Recovery would in the main be made only from those legally liable for the debt. The debtor would not be coerced into extending the obligation in a more burdensome form. I am convinced that a system of credit so extensively based on these unsound lines is bad for all concerned. It is bad for the debtor, because easy borrowing begets foolish spending and the more the facilities for borrowing are removed the more readily will persons who are not in a position to borrow, and who in consequence get only the hardest terms, accept alternatives such as curtailing their expenses and adding to their income by work. It is bad for the moneylender, as it encourages him in sharp practices and is a main source of his unpopularity. It is bad for the courts, which it encumbers with a great mass of litigation, converting them, to a large extent, into debt-collecting agencies for usurers. It is bad for the community as a whole in more ways than can easily be specified but among which I may mention the diversion of capital from industrial enterprises and the fact, which could be clearly demonstrated by examples, that the extortionate usury and dishonest practices engendered by promiscuous borrowing and lending are imported into transactions where the terms should be moderate and the honesty above suspicion. It is this bad system of credit that the civil law should aim at suppressing or at least reducing, while leaving every facility for sound loan transactions, and although there may be other remedies, such as endowing the courts with power to dispute the reasonableness of a contract with a moneylender, I am convinced that the restriction of imprisonment for debt to cases of *mala fides* would operate powerfully in this direction, and that such a measure would not prejudicially affect loan transactions of the better class. I do not disguise the fact that an apprehension to the

contrary is entertained, as the opinions expressed by some of the judicial officers consulted show. Thus Mr. Burn, District Judge of Madurai, writes: "There would probably be an increase in the number of secured loans. Transactions with persons unable to furnish any security would decrease and loans to such persons would be saddled with more onerous conditions." The District Munsif of Tinnevely considers that "any further restriction on imprisonment would cripple credit and make capital shy. The credit of petty merchants and agriculturists would certainly suffer." On the other hand a number of those consulted think that no material damage to credit would result. I believe myself, that fears of this nature are groundless. We have, it is true, few materials within this Presidency upon which to base a prediction, but if we may judge from the effects of enactments elsewhere in force, credit is too vigorous a growth to be easily destroyed. As an example in point, I would make brief allusion here to the Deccan Agriculturists' Relief Act.

38. *Deccan Agriculturists' Relief Act*.—This enactment was introduced into certain districts of the Bombay Presidency in 1879 after a series of riots, in which debtors had despoiled their creditors; had given ground for the conclusion that the agriculturist was in need of protection against the exactions of the sowcar. With some amendments, it continues in force to-day. It applies only to agriculturists and its main provisions, so far as we are now concerned with it, are—

- (1) to enable the court to go behind the bond, and to decide what the debtor should in justice be required to pay;
- (2) to abolish imprisonment for debt;
- (3) to declare land not liable for a debt for which it was not specifically pledged.

It will be seen that these innovations go very much further than the mere abolition of imprisonment. In the first place, the moneylender's demand is open to scrutiny from the commencement of transactions with his client, and the decree embodies no more than the principal advanced together with reasonable interest. Next, no execution can in any circumstances be taken against the person of the judgment-debtor. Finally, only the debtor's moveables are liable to attachment in satisfaction of the decree. It is clear that if legislation of this drastic character has not resulted in an *impasse* between sowcar and borrower, the mere restriction of imprisonment is not likely to have a disastrous effect on credit.

The operation of this Act has, almost continually since its passage into law, been subjected to the closest examination by the Bombay Government, so that there is on record a mass of evidence regarding its working, whether judged from the point of view of the ryot or of the moneylender; for it was universally recognized that a law which unduly prejudiced the moneylender would be bound to react unfavourably on the borrower. As recently as 1912 a Commission conducted an inquiry into the working of the Act, which has admittedly provoked a great deal of adverse criticism, and while finding that much of the special machinery designed to prevent fraud and diminish litigation, such as village registrars and conciliation courts, had proved a failure, it advised the retention of the main provisions of the Act, namely those, the chief of which I have enumerated, which relate to the operations of the courts, expressing the view that "the bad results noticed on all sides are due much more to the manner in which it has been worked than to anything obnoxious in its provisions." This recommendation, it seems to me, disposes of any fear that so moderate a measure as imposing some restriction upon imprisonment for debt would be seriously destructive of credit. Ever its total abolition in these Bombay districts, combined with other far more drastic measures, has not produced this result. "The agriculturist," writes the Commission, "gets harder terms from the moneylender than of yore, but he borrows less money from him. He would formerly

when he could get cash easily, run up a long account of hand-loans without a thought and would only realize his position when it has become hopeless. . . . The evidence placed before us in Guzerat "leaves no doubt that the expenditure of the cultivating classes on marriages and funerals, especially the latter which are the heavier of the two in that province, has greatly decreased. In the Deccan the people are less well to do than in Guzerat, and their ceremonial expenses are not such as they can cut down to a great extent, but we have evidence on many sides that the contraction of their borrowing power is making the people more thrifty. We have no evidence of any tendency for land to fall out of cultivation ; indeed, the poorest part of the population in the country, the Deccan *ryot*, seems, in spite of a cycle of bad seasons since 1897, to be better off than he was, more independent, less rooted to the soil." Other causes, the Commission acknowledges, have certainly contributed to this result. The effect of the Act on the money-lenders has naturally been considerable. They have "lost heavily by the drastic treatment which they have received under the Deccan Act, and many of them have closed their business. . . . In the Deccan they are taking to shop-keeping, cloth selling and in many cases to cultivation, mostly of course through servants or tenants, while in Guzerat, where there is more industrial development, they invest their money in banks and mills, and in some cases lend at very reasonable interest to co-operative credit societies." Who will deny that any measure which, to however moderate an extent, is likely to reproduce these results—thrift on the one side and the beneficial employment of capital on the other—will be for the general good ? We cannot of course separately estimate the part played by the abolition of imprisonment under the Deccan Act, but it is noticeable that throughout the discussions and investigations to which the Act has given rise this is the measure which has least provoked controversy. The 1912 Commission dismisses it in a brief paragraph which is nevertheless worth quoting as affording some evidence that the Civil Procedure Code is differently administered in the Bombay Presidency, and that the courts there consider it incumbent on them to make some inquiry into a debtor's circumstances :—

"Though the ordinary law now only permits arrest and imprisonment for debt where the debtor will not pay, though well able to do so, we favour the retention of the section exempting agriculturists therefrom. The objections may now be more sentimental than real, but the subject is one on which there has been a great deal of feeling among agricultural classes in the past and, if the agriculturist debtor has the means to pay his debts, we think that they can and should be recovered by methods other than imprisonment."

39. *Co-operative Credit Societies.*—The same inference regarding the maintenance of credit may be drawn from the working of the co-operative societies in this Presidency. At the close of the year 1913-14 the number of credit societies (other than central societies) was 1,297, with a total membership of 94,589. The loans granted during the year aggregated 37 lakhs, of which 15 lakhs were granted for the purpose of paying off prior debts. Loans granted on the joint security of two or more members amounted to 20.6 lakhs, a sum of Rs. 21,000 was lent on the borrower's simple bond, while the balance advanced was secured on property. The number of suits filed was 429, or less than one to every three societies, and 191 claims were satisfied, leaving 390 decrees, obtained in the current and previous years, still pending execution. In no single case was execution taken, nor has it ever been taken, against the person of the debtor ; the procedure is, in fact, wholly discountenanced. At the same time, no money has been written off as irrecoverable. These few facts seem to me to show that a sound system of credit, based on a purely property basis, can flourish in this country without the support of imprisonment for debt. It would be unfair to the money-lender to assume that he is in as

favourable a position as are these societies for recovering dues. They are able to reject applications with a greater freedom than the sowcar can afford to do, and have ways of procuring repayment which he is without. Still the co-operative method of giving credit, *i.e.*, on ascertained security, could undoubtedly be more closely approximated to by the money-lender than it is at present, and anything that will tend to produce this result should be welcomed. It is at least worth remembering that no amount of restriction placed on imprisonment will prejudice the working of these societies. It may in fact enlarge their scope by reducing that of the sowcar, to the advantage of the borrower who will get money at say  $9\frac{1}{2}$  per cent. compared with treble or four times that rate.

40. *Imprisonment for debt in Hyderabad State.*—The law governing imprisonment for debt in the Hyderabad State is similar in all essential respects to that contained in our Code of Civil Procedure. As however I learnt that it was differently administered I applied for information on the points—

(1) How is the law relating to this subject administered by the Hyderabad Courts? and

(2) What effect has the method of its administration had on the relations between creditor and debtor?

The reply to these questions, kindly furnished by the Legal Adviser to His Highness the Nizam's Government, is as follows :—

With regard to the first point, although the law relating to the imprisonment of judgment-debtors is the same in Hyderabad as in British India, excepting where the decree relates to immoveable property, yet in practice the arrest and imprisonment of judgment-debtors had been systematically discouraged. So long ago as 1288 H., *i.e.*, 45 years ago, it was specifically enjoined on the courts that before imprisoning a judgment-debtor they should be satisfied that he was a man of property, for it was explained that there was no use in imprisoning a mere pauper. Later (in 1295 H.) it was explained that the above order meant that when the arrested judgment-debtor pleaded poverty the decree-holder should prove that he was not a pauper and that he has concealed his property. The Courts were further instructed that before passing orders on a petition for imprisonment they should consider the general status of the defendant in order to be satisfied that he was a man of property, and that the money could be raised by other means as well. If it turned out that the decretal amount was recoverable from the judgment-debtor in other ways than by imprisoning him or if, in spite of his inability to prove that he was a pauper, the court found that the application for arrest was being made purely out of malice, then imprisonment should not be ordered. The Judges were also enjoined to exercise great care in administering these orders.

In the year 1303 H. shortly after the passing of the Civil Procedure Code (known as Gashti No. 2) in which a provision almost similar to the one in force in British India regarding the arrest of the judgment-debtors had been introduced, when the first Sir Salar Jung inspected the then newly reconstituted High Court, he found that four persons were imprisoned in execution of decrees, and on this he remarked that though imprisonment in execution of decrees was not against law, yet the practice of imprisoning people in execution of decrees should be resorted to as little as possible. In consequence of the above remark with a view to give effect to it an elaborate set of rules was prepared and circulated for the information of the Subordinate Courts, the more important of which were as follows :—

(a) No person shall be imprisoned unless it was *prima facie* shown to the satisfaction of the Judge that the decree-holder had exerted himself sufficiently to recover the decretal amount from the judgment-debtor, or that such exertion would be fruitless owing to some voluntary act of the judgment-debtor.

(b) If a person who is arrested in execution of a decree is brought before a court and he pleads poverty an investigation should be made as to his means in life, and until such investigation is completed he may be released on furnishing security to appear when called on, or allowed to remain in his own house in the custody of two peons, provided he pays their salary.

(c) When a person is imprisoned in execution of a decree neither should his moveable property be attached, nor should a sale of any of his property be effected so long as he continued to be in prison except for special reasons to be recorded in writing, because under the circumstances the loss which would accrue to the judgment-debtor by such attachment and sale would far outweigh the benefit that would accrue to the decree-holder.

It will be seen from the above that the right to imprison a judgment-debtor, though admitted in theory, had been hemmed in with so many restrictions that in practice it has been, and is still, very difficult to satisfy the courts before obtaining a warrant of arrest. A series of decisions of the High Court has emphasised and given point to the principles above enunciated, and have uniformly held that unless it was proved that the judgment-debtor has *mala fide* concealed his properties, or recklessly borrowed, or dishonestly wasted his property so that it may not be

available for paying his judgment debt, or that the money could not be recovered from his other properties, he should not be imprisoned. The necessary and obvious result of the rules and the decisions above referred to is that decree-holders very rarely resorted to arresting judgment-

\* Statement showing the number of persons arrested and imprisoned for debt by the State Courts of Hyderabad during the last five years :—

|       |      |     |     | Arrested. | Impri-<br>soned. |
|-------|------|-----|-----|-----------|------------------|
| Fasli | 1319 | ... | ... | 23        | 3                |
| "     | 1320 | ... | ... | 23        | 4                |
| "     | 1321 | ... | ... | 30        | 1                |
| "     | 1322 | ... | ... | 30        | 3                |
| "     | 1323 | ... | ... | 53        | 5                |
| Total |      |     |     | 159       | 16               |

debtors, and this is very well exemplified by the figures\* supplied by the High Court, which show that during a period of five years the highest number of applications in any one year in which arrests and *interim* (if I may use the word) were allowed was only 50, and the lowest 23, and the percentage of cases in which the judgment-debtors were actually imprisoned was between  $3\frac{1}{2}$  and 18. The total number of persons imprisoned within this period was only 16, *i.e.*, 3 on an average for each year. When it is remembered that so large a number as 17,400 (approximately) execution cases on the

average are filed every year, it will be readily admitted that, even deducting a fairly large percentage of cases from the above as relating to immovable properties, the remainder is quite a sufficiently large number to bring out prominently the fact that arrest and imprisonment are very distant and light factors, and do not in fact enter into the calculations of the decree-holders, in the realisation of their decretal amounts. This brings me to the consideration of the second of the two points above referred to.

5. From the foregoing account of the manner in which the law is being administered, and from the extremely limited number of imprisonments actually made, it is clear that there are not sufficient materials on which to base any reasonable or fairly accurate conclusions as to the effect of imprisonment on the relations between debtors and creditors. If however I may venture to hazard an opinion based on my personal experience of His Highness' Courts for nearly twenty-five years I may state that generally speaking the money-lenders do not, in spite of the very great difficulty in arresting their defaulting debtors, appear to have hesitated in entering into large loan transactions with them. Occasionally there have been serious complaints by the creditors against the practice which throws so much obstruction in the way of recovering moneys decreed by courts, but nearly all of them were in respect of debtors who, being in a position to pay and immune from arrest, have successfully evaded the process of the courts; and the fact that there is no time limit up to which decrees could be executed more than makes up for the disability regarding the arrest of the debtors. Another fact that has struck me is that in His Highness' Dominions there is not the same strained relation between the creditor and the debtor such as I have noted in parts of British India with which I am acquainted. It is not possible to premise accurately how far this is due to the disability under consideration, but there is no doubt that the fact is there. It may not unreasonably be assumed however that the absence of facilities for arrest is one of the leading causes of such a position as the old ideas regarding the relative value of *Izzat* and money irrespective of the actual resources in men and money are still strong in the minds of the people.

6. In conclusion I would observe that in my opinion the power to arrest debtors in execution of decrees should not be totally taken away from the courts. An enabling provision has therefore been made in the new Code of Civil Procedure for His Highness' Dominions. Even in England although an Act for the abolition of imprisonment for debt had been passed in 1869 yet it would be found that it was not a total abolition. The fear that there is a chance of being imprisoned for default of payment of the judgment debt, if not the actual imprisonment is bound to act as a deterrent at least in the case of those recalcitrant judgment-debtors who being possessed of means decline or neglect to pay their debts.

Here then we have, in a State adjoining the Madras Presidency and in all essential respects similarly circumstanced, imprisonment for debt restrained within the narrowest limits. Only one debtor is imprisoned for every 5,800 execution applications, compared with one debtor imprisoned for 165 such applications in Madras. Yet the money-lender still carries on his trade unchecked, and the courts apparently find no insuperable difficulties in administering the law.

41. *The English Law.*—Further light, if allowance be made for differences in conditions, is thrown on this subject by experience gained in England of the working of the law relating to debtors. The English law regulating imprisonment for debt is mainly contained in the Debtors Act, 1869 (32 & 33 Vict., C. 62). For non-payment of a judgment-debt, the debtor may be committed to prison for a period which may amount to six weeks or until payment is sooner made. Before such an order is made it must be proved to the satisfaction of the court that the debtor either has or has had since the judgment the means to pay the amount due, and has refused or neglected to do so. What is satisfactory proof of

means to pay depends on the facts of each case. The burden of proof is generally on the creditor. The procedure is briefly as follows.\* An application for leave to issue a summons to commit a judgment-debtor to prison may be made *ex parte* and without any affidavit. A printed form must be filled up by the applicant, which, if he gives leave, the Judge will endorse. The summons must ordinarily be issued not less than ten clear days before the hearing. When the summons comes on for hearing, the judgment-creditor must adduce some evidence that since the judgment the debtor has had means with which he could have paid the debt. This evidence may be given by an affidavit or by oral examination of witnesses. If the debtor does not attend the hearing he may be committed in his absence on proof of means and that the summons has been served. If upon the hearing the debtor satisfies the court that a receiving order has been made against him, or that he has been adjudicated bankrupt, no order of commitment can be made. A court, if it have bankruptcy jurisdiction, may instead of a commitment order make a receiving order (i) with the consent of the creditor and (ii) on his paying the prescribed fee. If the court has no bankruptcy jurisdiction, but thinks that a receiving order ought to be made instead of committing, it can transfer the case to the court having such jurisdiction.

In 1908 a Select Committee of the House of Commons was appointed to inquire into the subject of imprisonment for debt, and presented its report in the following year. In this report it recommended that, subject to some modifications, the existing law should be retained. At the same time it published a draft report, negatived only by six votes to five (the Chairman, who drafted it, not voting, so that the committee was in fact equally divided), in which the entire abolition of the system was proposed. Both these reports† are full of interest to every student of this subject, and though no course could be more dangerous than to apply at random to India conclusion drawn from English conditions, they afford in several respects such valuable corroborative support to views which I had already formed, and in fact recorded in this report, on a consideration of the circumstances of this country, before these reports came into my hands, that I may be pardoned for transcribing a few excerpts. The effect on credit of the power to imprison is thus described :—

The extent to which working men, clerks of all kinds and certain classes of the Civil Service are in the hands of money-lenders is, according to Judge Sir William Selfe, appalling. The borrowing of money by impecunious persons is rarely advisable, while the temptations held out by money-lenders and their touts has grown to be enormous . . . . The business of money-lending and the other business referred to have been encouraged by and rest mainly on the power of committal. (*Report, paragraph 25.*)

We have received overwhelming evidence that the credit given to the wage-earning classes, dependent upon the power of imprisonment for debt, is grossly excessive. It may without exaggeration be described as a social canker, at all events in some districts. The following are samples of the mass of evidence submitted to us :—

“The system of credit and imprisonment for debt in this country is very injurious to the working classes. I see a great deal of misery every day through it, and homes broken up.”

“Credit is given right and left without inquiry because of imprisonment for debt, and it is given at a price which allows a profit after the debtor has been sued in court, and the fees for the machinery of the court and all other fees are paid.”

“Credit only handicaps a man. If a man is once in debt he has a weight hanging over him which he cannot get rid of . . . . If you once start living on your credit you cannot get out of it.”

“It [imprisonment for debt] demoralises the person who receives it, leads to reckless credit on the part of the giver, and creates a new form of scoundrel, because it makes credit easy.” (*Draft report, paragraph 16.*)

Public policy requires that greater care should be exercised in the giving of credit. It has been suggested to us that often a tradesman is unwilling to give credit; but knowing that if he refuses a rival will give it, he is drawn in against his will by the pressure of competition. (*Draft Report, paragraph 25.*)

\* Halsbury, Vol. II, Bankruptcy and Insolvency, Part III.

† They are published in Vol. CXXVI of the *Law Times*, 1909.

In the Report the maintenance of the existing system is advocated in the following terms :—

“We consider that a credit system is based, among other things, on the knowledge of creditors that in such exceptional cases as these [*i.e.* of wilful default, etc.] there is power of compulsion. This power of compulsion therefore assists the giving and receiving of credit to the mutual advantage of giver and receiver in the vast majority of cases. We think it would be wrong to deprive such transactions of the sanction which they derive from the knowledge that both parties to each credit transaction have that breaches of faith can be dealt with by such compulsion as section 5 of the Debtors Act gives.”

The Draft Report, on the other hand, emphasises the evils which, even under the restricted form of imprisonment obtaining in England, it believes to exist :—

The existing system is expressly defended on the ground that, whatever its drawbacks may be, it does screw the money out of the debtor, and its advocates triumphantly emphasise the fact that, while the number of debtors imprisoned is undoubtedly large, say an annual average of 10,000, it is only a fraction of the number of warrants of commitment issued, which amount annually to 150,000. We must point out, however, that the money which is paid by the debtor to the creditor is very generally obtained by him either by begging it from his relatives and friends or by borrowing it from a money-lender at extortionate rates of interest. As Judge Parry said :—

“Imprisonment for debt is really made the means of blackmailing the relatives and friends of the debtor.” (*Draft Report, paragraph 12.*)

It seems to us that if the people who have to pay to keep the debtors out of prison are not the debtors themselves but their friends, the system stands self-condemned. (*Draft Report, paragraph 15.*)

On the subject of bankruptcy the Select Committee observes :—

Bankruptcy is an impracticable remedy in the case of a working-man ; he has no estate to administer and the disabilities as to status consequent on bankruptcy do not affect him ; the existing fee of £10 on filing the petition is also too large a sum for him or his creditors to pay. . . . The appointment of a receiver would be useless as there would be nothing to receive ; so would attachment of debts, for he has no debts owing. (*Report, paragraph 18.*)

Among other amendments of the law the Committee proposed—

- (a) that the maximum period of imprisonment should be reduced from forty-two to twenty-one days,
- (b) that in order to facilitate the inquiry prior to committal judges should have power to accept evidence of means other than legal evidence, *e.g.*, certificates as to wages from employers, statements of the bailiffs of the court, evidence not on oath and other hearsay evidence.

I have no information whether these proposals have yet been adopted. Some further interesting facts regarding the working of the English system may be read in *The Solicitor's Journal and Weekly Reporter* (issues of October 28th, 1911, August 31st, 1912, January 11th, 1913, and October 11th, 1913). The general result of experience gained in England is to show that, even with the safeguards which exist against the immoderate infliction of imprisonment, the courts find it hard to hold the balance even between creditor and debtor, and a good deal of dissatisfaction has been expressed by County Court Judges and others with the manner in which the law is working. Indications are not wanting that before very long the application of imprisonment will be still further narrowed, if not entirely revoked.

## SECTION IV.

## SUMMARY OF RECOMMENDATIONS.

42. I summarize below the proposals which have already been made in Section II of this report, the main change suggested being to make obligatory upon the courts the procedure which the Debtors Act made only permissive. Experience has shown that in no other way can the intention of that enactment be given effect to. By far the most urgent of the other changes suggested is that which would give the court power at any time, and without the consent of the decree-holder, to vary the method of paying the decree amount.

I. On the presentation of an application for the imprisonment of a judgment-debtor, the court should issue a notice calling upon him to appear upon a specified date and show cause why he should not be committed to prison. This notice should only be dispensed with, and a warrant of arrest issued, where the court considers, for reasons to be recorded, that the judgment-debtor is unlikely to appear in obedience to the notice (paragraph 27).

II. On the appearance or production of the judgment-debtor before the court, the court should examine him touching his ability to pay the amount of the decree, or, if that amount is payable by instalments, the amount of any instalment thereof. If the judgment-debtor pleads inability from poverty or other sufficient cause to pay the required amount, the court should hold an inquiry into the truth of his plea, and should at the same time take into consideration any such allegations of the decree-holder as are referred to in order XXI, rule 40 (2), Civil Procedure Code (paragraph 31).

III. If the court finds, as a result of this inquiry, that the judgment-debtor is unable to pay the debt, and has been unable to do so since the date of the decree or order, it should disallow imprisonment; provided that if it appears to the court that the judgment-debtor, whether because he possesses some assets or for any other reason, ought to petition in insolvency it may release him on his giving security that he so petitions within one month (paragraph 31).

IV. The court should have power, during the pendency of an inquiry, or to enable a judgment-debtor to pay the amount of the decree or to file an insolvency petition, or for any other sufficient reason, to commit him to the custody of one or more officers of the court, with permission to visit any place approved by the court. This power should be in addition to the power of the court to remand to the civil jail or to release on security (paragraph 32).

V. Upon the admission of an insolvency petition a receiving order should be passed, and all execution against the petitioner should thereupon be stayed (paragraph 14).

VI. The cost of insolvency proceedings in the Presidency town should be reduced (paragraph 13).

VII. The power of a court to order that payment of the amount of a decree shall be postponed or made by instalments, and to vary the terms of any such order previously made, should be exerciseable at any time, the decree-holder receiving notice but his acquiescence not being necessary (paragraph 33).

VIII. The maximum period of detention of a judgment-debtor in the civil jail to be six weeks in all cases (paragraph 34).

IX. The period of limitation for the execution of decrees of small amount to be reduced, and a three years' limit to be set to execution against the person (paragraph 35).

Amendments Nos. I to IV and VII can be effected by the High Court by virtue of the power to make rules conferred by section 122 of the Code of Civil Procedure, and subject to the sanction required by section 126. Proposal No. V requires the amendment of Act III of 1907, and Nos. VIII and IX require the amendment of sections 65 and 48 respectively of the Code of Civil Procedure.

A. J. CURGENVEN.

## APPENDIX I.

## CASES SPECIALLY INQUIRED INTO.

## A.—MADRAS CASES.

## CASE No. 1.

*Debtor.*—Muttayya Asari, Goldsmith, Triplicane, Madras.

*Suit.*—No. 12498 of 1908, Small Cause Court, Madras, on a promissory note for Rs. 200, dated 15th July 1906, interest 21 per cent., three executants, Rs. 60 principal repaid. Decree for Rs. 210 + Rs. 45-2-0, dated 9th October 1908.

*Execution*—(i) and (ii) Two applications for arrest warrants, in 1911 and 1913, unexecuted. Rs. 229 paid.

(iii) Debtor arrested 21st August 1914 for Rs. 68-8-0. Released next day on payment of money into jail.

*Further particulars.*—The debtor obtained the money, the other two signing as sureties, for trade expenses. The sum of Rs. 229 was repaid by the sureties, debtor afterwards reimbursing them. He was formerly employed by Messrs. P. Orr & Sons, but left them as his health broke down. When he was arrested his wife's brother paid the decree debt. There were no terms fixed as to repayment, as debtor has no property and only makes a small income by goldsmith's work.

*Commentary.*—Disinterested payment of a pauper's debt by a relative in order to save him from imprisonment.

## CASE No. 2.

*Debtor.*—V. Raghavalu Nayudu, Stable-keeper, Madras.

*Suit.*—No. 55 of 1913, Small Cause Court, Madras, for seven months' hire of jutka and pony at Rs. 7 per mensem. Decree for Rs. 49-10-10, dated 16th January 1913.

*Execution*—(i) Attachment of moveables : plaintiff took no steps.

(ii) and (iii) Arrest warrants : plaintiff took no steps.

(iv) Arrested 22nd May 1914 for Rs. 38-4-6. Released the same day, the amount being paid to bailiff.

*Further particulars.*—Debtor is now without occupation or possessions, and lives on his brother and nephew. The decree amount was paid by one Muniswami Mudaliyar, who hired the jutka referred to above from debtor. The payment was made for no consideration, or terms as to repayment, and as Muniswami is now dead it is unlikely that repayment will be made.

*Commentary.*—Satisfaction of the claim fell on a third party interested in the debtor owing to the latter's arrest and inability to pay.

## CASE No. 3.

*Debtor.*—Shaik Ismail Sahib, butcher, Madras.

*Suit* No. 6479 of 1911, Small Cause Court, Madras, by a Marwari on a promissory note for Rs. 70, dated 10th February 1911, interest 36 per cent. Decree for Rs. 73 (Re. 1 having been paid) + Rs. 18-2-0, dated 4th May 1911.

*Execution*—(i) to (vii) Five attachments of moveables and two arrest warrants. No satisfaction obtained.

(viii) Debtor arrested 29th March 1914 for Rs. 86-4-0. Released 15th May 1914 on payment of Rs. 10, balance to be paid in monthly instalments of Rs. 3.

*Further particulars.*—Debtor is a butcher earning about Rs. 20 a month and supporting seven persons. He has no property and other debts amounting to about Rs. 60. He has not paid any instalment towards the decree debt, and creditor has taken further execution against him. He cannot afford to file an insolvency application.

*Commentary.*—The money-lender was unusually prompt in filing his suit, and unusually energetic in taking out execution, probably because he knew the debtor was a man of no substance. This is the sort of case in which money is lent purely on the security provided by the power to imprison, the risk being reflected in the high rate of interest charged. The court ought to have inquired into the debtor's circumstances when the decree was passed, and to have made an order for payment by instalments proportioned to his means. If this order was not complied with, imprisonment would have been justifiable.

## CASE No. 4.

*Debtor.*—T. Krishnaswami Nayakar, contractor, Madras.

*Suit.*—No. 3322 of 1914, Small Cause Court, Madras, on a promissory note for Rs. 200, dated 3rd December 1912, interest 30 per cent. Decree for Rs. 171 + Rs. 32-10-0 (Rs. 80 having been paid towards principal), dated 6th March 1914.

*Execution.*—(i) Arrest : warrant unexecuted.

(ii) Arrest for Rs. 87-8-0, paid to bailiff on arrest of debtor.

*Further particulars.*—Debtor has property, including a house worth about Rs. 2,500, and is respectably connected. As soon as he was arrested one of his friends paid the decree debt. The money advanced will probably be repaid.

*Commentary.*—Imprisonment was efficacious, and may be justified on the ground that the debtor had means to pay the debt: but it would have been far better justified had some judicial proof been required of that fact. The burden of discharging the debt primarily fell on a friend. Execution against property would probably have succeeded.

#### CASE No. 5.

*Debtor.*—Kanna Pillai, milkseller, Aminjikai, Saidapet.

*Suit.*—No. 2139 of 1913, Small Cause Court, Madras, by a Marwari on a promissory note for Rs. 70, dated 9th March 1911, interest 75 per cent. Decree for Rs. 140 + Rs. 32-8-0, dated 3rd March 1913.

*Execution.*—(i) Arrest: not proceeded with.

(ii) Arrest for Rs. 168-8-0 on 20th February 1914. Debtor released on 21st March 1914 on payment of decree debt into jail.

*Further particulars.*—The debtor is described as a poor shepherd having one cow, whose milk his wife sells in the paracheries of Madras. He lives in a thatched house worth about Rs. 200. He has other debts amounting to about Rs. 150. The decree debt was paid by his mother's sister, who lives at Chingleput. She paid the money in order to release her nephew, and there is no understanding and little prospect that it will be repaid.

*Commentary.*—A relative came forward with the money after the debtor had been a month in jail. He ought not to have been imprisoned.

#### CASE No. 6.

*Debtor.*—Abdul Aziz, Retired Havildar, Madras.

*Suit.*—No. 5058 of 1909, Small Cause Court, Madras, by a Marwari on a promissory note for Rs. 50, dated 18th April 1908, interest 75 per cent; Debtor paid Rs. 22-10-0 towards interest. Decree for Rs. 61-12-0 + Rs. 9-11-0, dated 22nd April 1909.

*Execution.*—(i) and (ii) Arrest warrants: not proceeded with.

(iii) Debtor arrested for Rs. 94-13-3 on 18th April 1914. Released 6th May 1914 on payment of Rs. 10, balance to be paid in monthly instalments of eight annas.

*Further particulars.*—Debtor has no property or other debts. He lives solely on his pension of Rs. 5 a month. He has no funds to apply in insolvency.

*Commentary.*—The case was a fit one for an order to pay by instalments. The debtor was quite unable to pay the whole sum in a lump, as the court would have found on inquiry.

#### CASE No. 7.

*Debtor.*—Tangavelu Mudaliyar, clerk in Railway Locomotive Department, Madras.

*Suit.*—No. 14895 of 1913, S.C.C., Madras, by a Marwari on a promissory note for Rs. 100, dated 29th September 1912, interest 24 per cent. Debtor paid Rs. 45. Decree for Rs. 124 + Rs. 28, dated 29th October 1913.

*Execution.*—(i) Attachment of goods: not proceeded with.

(ii) Debtor arrested 25th March 1914 for Rs. 116-6-0. Released 2nd April 1914 on payment of decree amount.

*Further particulars.*—Debtor earns a salary of Rs. 14 a month. His father left him over Rs. 2,000 three years ago. He has squandered this, is now heavily in debt, and spends his time evading his creditors. In order to obtain his release he borrowed money with the help of his brother-in-law from a money-lender at 24 per cent. He has no property beyond a few vessels worth about Rs. 20.

*Commentary.*—A spendthrift on whom the ease with which money can be borrowed has had fatal effects. Release from jail obtained by further borrowing, in which a relative has become involved.

#### CASE No. 8.

*Debtor.*—T. Ramasesha Ayyar, hotel-keeper, Madras.

*Suit.*—No. 3966 of 1914, S.C.C., Madras, on a promissory note for Rs. 100, dated 11th June 1912, interest 24 per cent. Decree for Rs. 148-8, dated 16th March 1914, Rs. 15 principal having been paid.

*Execution.*—Arrested 7th August 1914 for Rs. 148-5-0. Released 8th August 1914 on paying Rs. 20 into court and undertaking to pay the balance in monthly instalments of Rs. 5.

*Further particulars.*—The debtor makes an average monthly income of Rs. 50, and has property in Trichinopoly district worth about Rs. 3,000. He has other decrees outstanding against him, viz., one for Rs. 130 and one for Rs. 600. He was arrested on account of the former, and agreed to make payments in Rs. 15 monthly instalments. He has not carried out his undertakings, but pays each creditor two or three rupees monthly, and they accept these payments. He is well-meaning but a bad manager, as with his income he ought to succeed in keeping out of debt.

*Commentary.*—Facilities for obtaining credit are largely answerable for his indebtedness. If the court had inquired under order XXI, rule 40, it would probably have found that he was liable to arrest on the ground that he had assets sufficient to discharge the decree amount.

**CASE No. 9.**

*Debtor.*—K. Kuppan Chetti, butcher, Madras.

*Suit.*—No. 8807 of 1912, S.C.C., Madras, on account for sheep delivered. Decree for Rs. 11-1-0, dated 29th July 1912.

*Execution.*—(i) Arrest warrant,  
(ii) Attachment of goods,  
(iii) and (iv) Arrest warrants, } all not proceeded with.  
(v) Arrest warrant issued 22nd July 1914 for Rs. 12-7-0. Not executed as plaintiff certified

satisfaction.

*Further particulars.*—Debtor is now a cart-driver earning about Rs. 20 per mensem. His mother, who lives with him and who is a rice seller, paid the decree debt. Debtor has other debts amounting to about Rs. 50, and no property.

*Commentary.*—An instance, not a very flagrant one, in which the burden of paying the debt fell upon a relative.

**CASE No. 10.**

*Debtor.*—A. Kanna Pillai, milkman, Madras.

*Suit.*—No. 9796 of 1911, S.C.C., Madras, by a Marwari on a promissory note for Rs. 75, dated 10th April 1910, interest 36 per cent. Decree for Rs. 85-6-0, dated 15th August 1911.

*Execution.*—(i) Arrest : not proceeded with.

(ii) Debtor arrested on 24th January 1914 for Rs. 80-12-0. Released 10th February 1914 on payment of amount into jail.

*Further particulars.*—Debtor lives in his own house and has no other property. He paid the debt by pawning some jewels at 12 per cent. interest. The money was actually borrowed by the other signatory of the note, and debtor remained some time in jail in the hope that this man would pay up, but he did not do so.

*Commentary.*—Imprisonment may be justified on the ground that debtor had the means to pay.

**CASE No. 11.**

*Debtor.*—Mahamed Yakub Sahib, peon in Electric Corporation office, Madras.

*Suit.*—No. 5734 of 1914, S.C.C., Madras, by Abdul Karim Sahib for a loan of Rs. 14 less Re. 1 paid. Decree for Rs. 14-14-0, dated 17th April 1914.

*Execution.*—Arrested 12th August 1914 for Rs. 15-6-0. Released 29th August 1914 on payment of money to jailor.

*Further particulars.*—Debtor is a peon living on his pay, and with no property worth mention. He satisfied the decree by pawning his wife's jewels.

*Commentary.*—Imprisonment secured payment which other means would probably have failed to do.

**CASE No. 12.**

*Debtor.*—Narasimhulu Nayudu, gumasta, Madras.

*Suit.*—No. 3465 of 1913, S.C.C., Madras, by a Marwari on a promissory note for Rs. 200, dated 14th December 1912, interest 4 pies per rupee (25 per cent.). Decree for Rs. 212-6-0 + Rs. 42-4-0, dated 14th March 1913.

*Execution.*—Arrested on 19th April 1913 for Rs. 259-0-6. Released on 21st April 1913, plaintiff certifying satisfaction.

*Further particulars.*—Debtor pawned his wife's jewels and paid the amount. He then sold the two houses which he owned in Madras, redeemed the jewels and paid debts aggregating Rs. 5,600. He has now no immoveable property and no debts, and is working as gumasta under a Nattukottai Chetti on Rs. 7-8-0 a month.

*Commentary.*—Imprisonment was deserved, as the debtor had the means to pay the debt, and had his own conduct to thank for being arrested. Execution could have been taken against the houses in Madras, but it would have been more troublesome.

**CASE No. 13.**

*Debtor.*—Sampathu Mudaliyar, no occupation, Red Hills, Saidapet.

*Suit.*—No. 15011 of 1912, S.C.C., Madras, by a Nattukottai Chetti on a promissory note for Rs. 200, dated 9th October 1911, interest 24 per cent. Decree for Rs. 247-1-1 + Rs. 45-15-0, dated 2nd December 1912.

*Execution.*—Arrested 6th March 1913 for Rs. 305-2-1. Released next day, plaintiff certifying full satisfaction.

*Further particulars.*—Debtor is the youngest of three undivided brothers possessing property worth about Rs. 20,000. He is a spendthrift and got seriously into debt by betting, etc. When he was arrested his eldest brother paid this and other debts, debtor executing a formal discharge of his right to a share in the family property in return for a monthly maintenance allowance of Rs. 20.

*Commentary.*—A rake's progress, accelerated by the accommodating attitude of the money-lender. Imprisonment was deserved, and an inquiry would have elicited this fact.

**CASE No. 14.**

*Debtor.*—A. Rangaswami Ayyangar, landholder, Tiruvallur.

*Suit.*—No. 7143 of 1912, S.C.C., Madras, for arrears of maintenance due to wife. Decree for Rs. 33 + Rs. 8-10-0, dated 7th May 1912.

*Execution.*—Arrest warrant issued for Rs. 44-15-3 and returned unexecuted as plaintiff certified full satisfaction on 17th April 1913.

*Further particulars.*—Debtor was clerk to Mr. J. C. Adam, and owned a house and some land. He mortgaged the house for Rs. 5,000 at 10 per cent. and paid the decree debt and other debts. He is now managing his land, worth Rs. 5,000, at Tiruvallur.

*Commentary.*—Arrest was deserved, as debtor had the means to pay.

#### CASE No. 15.

*Debtor.*—G. Kothandaramayya, clerk to a Komatti, Madras.

*Suit.*—No. 12911 of 1913, S.C.C., Madras, for the return of jewels (or their value) pawned with him. Decree for Rs. 60 + Rs. 15-8-0, dated 26th September 1913.

*Execution.*—Debtor arrested for Rs. 78-2-0 on 17th April 1914. Released 7th May 1914 on payment of Rs. 25, balance to be paid in monthly instalments of Rs. 25.

*Further particulars.*—The debtor was employed by Messrs. Oakley, Bowden & Co. as a broker on Rs. 15 a month. He lost this employment when imprisoned and is now a clerk under a Komatti on Rs. 12. He has no property, is unable to support his wife (who now lives with her father) and has been unable to pay the instalments as promised.

*Commentary.*—Not a fit case for imprisonment in the first resort. The debtor was unable to pay the decree amount in a lump sum, and the immediate result of imprisonment was to lose him his employment and still further to diminish his ability to pay. The Court should have inquired into his circumstances and fixed instalments according to his means. He could then have been imprisoned on failure to pay according to this order.

#### CASE No. 16.

*Debtor.*—Abdul Khadar Sahib, butcher, Madras.

*Suit.*—No. 372 of 1911, S.C.C., Madras, by a Marwari on a promissory note for Rs. 165, dated 15th February 1910, interest 24 per cent. Decree for Rs. 201-5-0 + Rs. 26-9-0, dated 21st January 1911.

*Execution.*—(i), (ii) and (iii) Attachments of goods : not proceeded with.

(iv) Debtor arrested 25th April 1914 for Rs. 275-8-0. Released 18th May 1914 on payment of Rs. 25, balance to be paid in monthly instalments of Rs. 5.

*Further particulars.*—Debtor paid the Rs. 25 by pawning his wife's jewels. He has not redeemed them, has paid nothing further towards the decree, has no property and debts amounting to about Rs. 300. He earns about Rs. 20 a month as a butcher, and has twelve persons to support. He is unable to present an insolvency application owing to the expense.

*Commentary.*—Illustrates the ability of a man of no substance to contract debts. The Court should have made the decree amount payable by instalments in the first instance. The debtor could then have been imprisoned on failing to pay according to this order.

#### CASE No. 17.

*Debtor.*—R. Rajagopaul Nayudu, betel-leaf seller, Madras.

*Suit.*—No. 10438 of 1914, S.C.C., Madras, for Rs. 33-11-6 being an account for ghêe delivered in December 1913. Decree for Rs. 33-11-6 + Rs. 4-11-0, dated 19th August 1914.

*Execution.*—Debtor arrested 19th September 1914 for Rs. 39-3-6. Released 21st September 1914 on plaintiff certifying that debtor had paid Rs. 10 and would pay balance in Rs. 5 monthly instalments.

*Further particulars.*—Debtor has no property, but maintains himself by selling snuff. He did not actually pay plaintiff any cash, but obtained his release by executing a promissory note for Rs. 40 at 24 per cent. interest. Creditor has since certified full satisfaction.

*Commentary.*—Shows how a debtor who cannot pay is induced by imprisonment to renew his liability.

#### CASE No. 18.

*Debtor.*—Kannappa Achari, goldsmith, Madras.

*Suit.*—No. 2335 of 1914, S.C.C., Madras, on a promissory note for Rs. 100, dated 20th February 1913, interest 36 per cent. Rs. 20 paid. Decree for Rs. 109-8-0 + Rs. 24-15-0, dated 19th February 1914.

*Execution.*—Debtor arrested 25th March 1914 for Rs. 137-2-0. Released 25th September 1914 on expiry of time.

*Further particulars.*—The debtor signed the note as surety for a friend. He was working as a goldsmith and had no property. No part of the decree amount was realized. Debtor has left Madras and no further inquiries are possible.

*Commentary.*—The creditor imprisoned for the full period a debtor who apparently had no means of paying the debt.

#### CASE No. 19.

*Debtor.*—Muniswami Appa, rice-seller, Madras.

*Suit.*—No. 7629 of 1913, S.C.C., Madras, for Rs. 44-15-0, being balance due on account of sale of rice. Decree for Rs. 44-15-0 + Rs. 6-9-0, dated 15th July 1913.

*Execution.*—Debtor arrested 11th August 1914 for Rs. 55-2-0. Released 12th August 1914, plaintiff certifying full satisfaction.

*Further particulars.*—Debtor was impleaded as surety for the payment of the account. He has no property and is working as a cooly and earning As. 8 to As. 12 per diem. His son secured his release by executing a fresh promissory-note for Rs. 60 in plaintiff's favour.

*Commentary.*—Imprisonment, which was not justified as the man had no means of paying the debt, involved his son in debt.

#### CASE No. 20.

*Debtor.*—Syed Lal, pensioned sepoy, Madras.

*Suit.*—No. 7219 of 1911, S.C.C., Madras, on a promissory note for Rs. 25, dated 2nd May 1909, interest one anna per rupee per month (75 per cent.) Rs. 17 paid. Decree for Rs. 23 + Rs. 6, dated 11th May 1911.

*Execution.*—Debtor arrested 19th August 1914 for Rs. 35-1-0. Released 20th August 1914 on payment of Rs. 5 and undertaking to pay balance in Rs. 1-8-0 monthly instalments.

*Further particulars.*—Debtor, whose age is given as 85, is solely dependent on a pension of Rs. 4 a month. He borrowed the money thinking to open a small shop, but his great age prevented him from making a success of it. He declares that he did not receive the full sum named in the promissory note. He managed to find Rs. 5 to secure his release with, and the creditor agreed to accept one rupee per mensem as he was unable to pay the Rs. 1-8-0 originally stipulated for.

*Commentary.*—The interest was exorbitant, and the Court might in the first instance have ordered payment by instalments of say As. 8 a month. It was not a fit case for imprisonment.

#### CASE No. 21.

*Debtor.*—P. Mahomed Hussain Sahib, butcher, Madras.

*Suit.*—No. 18006 of 1909, S.C.C., Madras, for Rs. 6-12-0, being value of sheep supplied. Decree for Rs. 6-12-0 + As. 15, dated 3rd January 1910.

*Execution.*—Debtor arrested 19th August 1914 for Rs. 9. Released 9th September 1914, creditor certifying satisfaction.

*Further particulars.*—Debtor was not traceable, but from inquiries made it appears that he was of improvident habits and at the time of arrest had no means to pay the debt. After he had been for some days in jail his daughter died and his relatives interceded for him with the creditor, and offered to pay the amount of the subsistence allowance. The creditor accepted this and let the debtor off the decree amount.

*Commentary.*—The debtor was probably unable on arrest to pay the lump sum, and payment might have been ordered in instalments of say one rupee a month.

#### CASE No. 22.

*Debtor.*—Ponnuswami Chetti, merchant, Triplicane.

*Suit.*—No. 2484 of 1913, S.C.C., Madras, for Rs. 155 rent. Decree for Rs. 155 + Rs. 32-6-0, dated 4th March 1913.

*Execution.*—(i) Attachment of goods : plaintiff took no steps.

(ii) Arrest of garnishee : plaintiff made arrangement with garnishee.

(iii) Arrest warrant issued against debtor for Rs. 117-7-4, and returned unexecuted, the bailiff reporting that the decree had been satisfied.

*Further particulars.*—Debtor is an oilmonger earning from Rs. 20 to Rs. 30 a month. As soon as he heard that a warrant had been issued against him he collected some outstandings and paid up.

*Commentary.*—An instance of the salutary action of process against the person.

#### CASE No. 23.

*Debtor.*—K. C. Ranganatha Mudaliyar, native physician, Madras.

*Suit.*—No. 12087 of 1913, S.C.C., Madras, on a promissory note for Rs. 150, dated 14th August 1909, interest 21 per cent., two signatories, Rs. 120 principal paid. Decree for Rs. 55 + Rs. 14-14-0, dated 16th August 1913.

*Execution.*—(i) Arrest : plaintiff took no steps.

(ii) Arrest warrant issued 11th July 1914 for Rs. 70-6-0 against debtor, who paid full amount to bailiff on arrest.

*Further particulars.*—Debtor has no property and earns about Rs. 30 a month as a native physician. The money was borrowed by one Ranga Achari and debtor signed as surety. Ranga Achari's whereabouts not being known, debtor was proceeded against. He sold some English drugs (not yet paid for) and satisfied the decree. His debts amount to Rs. 3,000, and he has since filed an insolvency petition.

*Commentary.*—The man was insolvent, and arrest only resulted in one creditor securing priority over the remainder.

#### CASE No. 24.

*Debtor.*—G. Srinivasulu Nayudu, petty merchant, Saidapet.

*Suit.*—No. 14492 of 1913, S.C.C., Madras, on a promissory note for Rs. 300, dated 10th April 1909, interest 12 per cent., Rs. 200 paid. Decree for Rs. 150 + Rs. 30, dated 31st October 1913.

*Execution.*—(i) Arrest. Plaintiff took no steps.

(ii) Arrest warrant issued for Rs. 189-10-0. Money paid to bailiff 16th August 1914.

*Further particulars.*—The money was borrowed for family purposes. The debtor was arrested in the house of a dancing-girl who pawned her jewels and paid the debt. There was no express agreement as to repayment. Debtor has land in Saidapet taluk worth over Rs. 2,000.

*Commentary.*—Arrest was effectual; whereas attachment of the land, which lies outside the Court's jurisdiction, would probably have taken time and trouble. We may assume that some at least of the jewels pawned by the dancing-girl were given her by the debtor.

#### CASE No. 25.

*Debtor.*—K. Kannan Chetti, vakil's clerk, Madras.

*Suit.*—No. 16971 of 1913, Small Cause Court, Madras, on balance of account for purchase of a harmonium. Decree for Rs. 27, dated 9th December 1913.

*Execution.*—(i) Debtor arrested 21st February 1914 and released on payment of Rs. 5 and provision of security to pay balance in three instalments.

(ii) Arrest warrant : debtor not found.

(iii) Debtor arrested 8th September 1914 for Rs. 23-10-0. Released 19th September 1914 on payment of Rs. 18 and undertaking to pay balance within one month.

*Further particulars.*—Debtor earns about Rs. 20 a month as a petitionwriter, etc. He has no property. The payment of Rs. 18 was made by his concubine in order to release him, and without any undertaking by him to repay it. He has not yet paid the balance due under the decree.

*Commentary.*—The purchase of a harmonium by a man in these circumstances was a piece of extravagance rendered possible by the vendor's willingness to give credit, and that in turn was probably due to the power to obtain his debtor's arrest. The case should have been dealt with rather by an order to pay by instalments than by arrest for the whole sum due.

#### CASE No. 26.

*Debtor.*—T. Singaravelu Mudaliyar, unemployed, Triplicane.

*Suit.*—No. 12802 of 1913, Small Cause Court, Madras, by a Marwari on a promissory note for Rs. 50, dated 14th February 1913, interest 36 per cent. Decree for Rs. 60-6-0 + Rs. 15-8-0, dated 24th September 1913.

*Execution.*—(i) Arrest warrant : plaintiff took no steps.

(ii) Debtor arrested 2nd February 1914 for Rs. 78-9-6. Released 17th February 1914 on plaintiff certifying satisfaction.

*Further particulars.*—Debtor borrowed the money and squandered it in dissipation on the same day. He was left some property by his father which he has spent. He has no settled occupation, but is said to do some work as "commission agent." He did not pay any part of the decree amount, but was released by his creditor who evidently gave up hope of recovering it.

*Commentary.*—Illustrates the fact that easy borrowing begets foolish spending. Had the Marwari not been able to reckon on his power to imprison, probably he would not have lent the money.

#### CASE No. 27.

*Debtor.*—Singara Asari, carpenter, Madras.

*Suit.*—No. 2293 of 1914, Small Cause Court, Madras, on a promissory note for Rs. 100 dated 17th May 1913, interest 6 pies per rupee per month ( $37\frac{1}{2}$  per cent.) Decree for Rs. 127 + Rs. 27-2-0 dated 18th February 1914.

*Execution.*—Debtor arrested 17th August 1914 for Rs. 160-10-0. Released 1st September 1914, plaintiff certifying satisfaction.

*Further particulars.*—Debtor secured his release by agreeing to pay his creditor Rs. 3 a month until the debt was discharged. He has not adhered to this agreement. He is a carpenter working for Messrs. Wrenn, Bennett & Co., on a daily wage of 12 annas, and has no property beyond a few cooking vessels.

*Commentary.*—The creditor ultimately agreed to a course which the court might have ordered initially,—payment by instalments. Inquiry would have proved him incapable of paying the lump sum on arrest. His failure to pay even the instalments is perhaps wilful and due to his knowledge that he cannot again be imprisoned.

#### CASE No. 28.

*Debtor.*—G. Srinivasulu Nayudu, diamond merchant, Madras.

*Suit.*—No. 11939 of 1913, Small Cause Court, Madras, on a promissory note for Rs. 100, dated 11th November 1910, interest 24 per cent. Decree for Rs. 118-12-0 + Rs. 26-1-0, dated 12th September 1913.

*Execution.*—(i) Arrest warrant applied for : no steps taken.

(ii) Arrest warrant issued 8th August 1914 for Rs. 156. Money paid to bailiff on arrest.

*Further particulars.*—The debtor had ready money available, and was able to pay when confronted with the warrant.

*Commentary.*—Shows arrest in its most harmless and effectual aspect.

#### CASE No. 29.

*Debtor.*—A. Chakrapani Nayudu, clerk, Triplicane, Madras.

*Suit.*—No. 5603 of 1913, Small Cause Court, Madras, on a promissory note for Rs. 50, dated 27th October 1912, interest  $37\frac{1}{2}$  per cent. Decree for Rs. 52-13-0 + Rs. 14-9-0, dated 18th April 1913.

*Execution.*—Debtor arrested 5th August 1914 for Rs. 74-11-3. Released 6th August 1914 on payment of decree amount into jail.

*Further particulars.*—Debtor is a clerk drawing Rs. 40 a month in the employ of Messrs. Siemens Brothers. He borrowed the money to pay for an operation for hydrocele. On his arrest his father, who is an agent under a railway contractor on Rs. 20 a month, pawned some jewelry and paid the debt.

*Commentary.*—A fit case for an order for payment by instalments.

#### CASE No. 30.

*Debtor.*—Pakir Mohidin Sahib, trader in brass vessels, Madras.

*Suit.*—No. 891 of 1913, Small Cause Court, Madras, by a Marwari on a promissory note for Rs. 100, dated 24th May 1910, interest 75 per cent. Decree (*ex parte*) for Rs. 298-7-0 + Rs. 47-10-0, dated 29th January 1913.

*Execution.*—(i) Arrest warrant, dated 8th April 1914, returned unexecuted as debtor could not be found.

(ii) Debtor arrested 10th August 1914 for Rs. 384-3-0. Released 11th August 1914, decree-holder certifying full satisfaction.

*Further particulars.*—Debtor inherited some property from his father but has spent nearly all of it in gambling. The debt was incurred partly for this purpose and partly to carry on his trade in brass vessels, out of which he used to make about Rs. 40 a month. When he was arrested, his wife's brother, a rice merchant, paid the debt, and hopes to recover it from the debtor by degrees. Debtor is reported to have given up his brass business, to be involved in debt, and to be absconding from his other creditors.

*Commentary.*—The more credit such a man can get, the more complete his ruin, and the greater the burden cast on his relations. The money-lender more than trebled his money in a little over four years, though he lent it on what, thanks to the power of imprisonment, turned out to be excellent security, viz., the respectability of the debtor's connexions. It is a common line of reasoning to maintain that such a case as this,—an unprincipled borrower without attachable effects—proves the necessity for imprisonment. I prefer the view that it is the occurrence of such cases that condemns the system, because prevention is better than cure.

#### CASE No. 31.

*Debtor.*—V. P. Hassam Shaik Mahomed, trader in brass vessels, Madras.

*Suit.*—No. 7584 of 1913, Small Cause Court, Madras, on a promissory note for Rs. 17, dated 4th January 1911, interest one anna per rupee per mensem (75 per cent). Decree for Rs. 46-12-0 + Rs. 6-5-0 dated 14th July 1913.

*Execution.*—Debtor arrested 10th August 1914 for Rs. 56-3-0. Released 11th August 1914, decree-holder reporting full satisfaction.

*Further particulars.*—Debtor makes an estimated monthly income of Rs. 30 from his brass trade. He is a gambler and incurred the debt owing to this vice. When arrested the money was paid by his mistress, who is fairly well-to-do. There is no agreement as to repayment.

*Commentary.*—Bears a close resemblance to case No. 30, except that objection need not be taken to the extraction of the money from the mistress.

#### CASE No. 32.

*Debtor.*—Cunnayya Chetti, worker in bamboo, Madras.

*Suit.*—Application for probate, High Court. Execution taken for costs.

*Execution.*—Debtor arrested 14th February 1914 for Rs. 201-7-0. Released 17th August 1914 on expiry of time.

*Further particulars.*—Debtor's only assets at time of arrest were (a) title to a house in Madras, which is disputed by decree-holder and under litigation, and (b) about Rs. 50 worth of moveables. Before arrest he sold a house for Rs. 250 and paid his debts other than the decree debt with the proceeds. He earns about Rs. 20 a month by working in bamboo.

*Commentary.*—Here it may be said that the debtor gave his other creditors an undue preference, and the court might have held him liable under the terms of rule 40, order XXI, C.P.C. The creditor very probably kept him in jail during the whole six months because there was still a dispute going on between them, rather than because he hoped to realize the decree amount.

#### CASE No. 33.

*Debtor.*—Kannayya Pillai, milk seller, Madras.

*Suit.*—No. 52 of 1913, Small Cause Court, Madras. Decree for Rs. 16 costs, dated 29th January 1913.

*Execution.*—Debtor arrested 27th November 1913 for Rs. 16-14-0 and released the same day on paying the sum to bailiff.

*Further particulars.*—Debtor makes about Rs. 50 a month from his trade. He realized some money from customers and paid the amount at once.

*Commentary.*—A case favourable to the system of arrest.

#### CASE No. 34.

*Debtor.*—C. Kuppuswami Nayudu, furniture merchant, Madras.

*Suit.*—No. 1506 of 1913, Small Cause Court, Madras, on a promissory note for Rs. 70, interest 24 per cent., Rs. 5 paid. Decree for Rs. 73-8-0 + Rs. 18-3-0, dated 7th February 1913.

*Execution.*—(i) Attachment of moveables : unexecuted as door of dwelling-house closed.

(ii) Debtor arrested and released on paying Rs. 20 into Court and agreeing to pay the balance in monthly instalments of Rs. 5.

(iii) Debtor arrested 7th February 1914 for Rs. 64 and released the same day, decree-holder certifying satisfaction.

*Further particulars.*—Debtor borrowed the money to help a friend who was in straits for the money. When arrested his wife obtained the amount from a friend who will doubtless be repaid, as debtor owns three houses in Madras and is otherwise well-to-do.

*Commentary.*—Debtor was fully able to pay, and he was treated appropriately.

#### CASE No. 35.

*Debtor.*—R. Lakshmanaswami, merchant, Madras.

*Suit.*—No. 11637 of 1913, Small Cause Court, Madras, on a promissory note for Rs. 500, dated 14th March 1913, interest 12 per cent., two executants, Rs. 150 paid. Decree for Rs. 372-8-0 + Rs. 49-4-0, dated 10th September 1913.

*Execution.*—(i) Attachment of goods : plaintiff took no steps.

(ii) Arrest warrant against debtor : plaintiff took no steps.

(iii) Debtor arrested 10th September 1914, for Rs. 131-6-0 and released the same day, decree-holder reporting full satisfaction to bailiff.

*Further particulars.*—Debtor was carrying on a liquor business in partnership with one P. S. Govindaswami Mudali, and the debt was incurred by them jointly for this purpose. The business failed, and Govindaswami is said to be deeply in debt and has left Madras to avoid his creditors. On debtor's arrest the decree was satisfied by (a) a cash payment of Rs. 60 made by his undivided brothers, (b) a cash payment of Rs. 30 contributed by a friend who pawned his jewels for the purpose (c) a bond given to decree-holder for Rs. 41-6-0. Debtor and his brothers jointly own a house in Triplicane. He has to satisfy the friend by redeeming the jewels. And he is paying off the amount of the bond in Rs. 10 monthly instalments.

*Commentary.*—One of the difficult class of cases in which joint property, but not joint liability, is involved. An arrest warrant is probably on the whole the best method of settlement.

#### CASE No. 36.

*Debtor.*—M. C. Raja Lal, teacher, Free Church Mission Girls' School, Chintadripet.

*Suit.*—No. 18295 of 1912, Small Cause Court, Madras, by a Marwari against one G. M. James and debtor on a promissory note for Rs. 60, dated 22nd July 1912, interest 24 per cent. Decree for Rs. 65-6-0 + Rs. 17-2-0, dated 18th December 1912.

*Execution.*—(i) Attachment of goods : plaintiff took no steps.

(ii) Debtor arrested 20th July 1914, for Rs. 48-3-6. Released 21st July 1914, decree-holder reporting full satisfaction.

*Further particulars.*—Both defendants were teachers in the above school, and borrowed the money for a butler named Lazarus, who wanted it for his daughter's marriage expenses. Lazarus subsequently went to France and never repaid them. When debtor was arrested his relations found Rs. 34, and James borrowed the remainder. Debtor is paid Rs. 17 a month by the school and has no other resources. James left the school some months ago and obtained employment in a skin merchants shop on Rs. 12. He has since died.

*Commentary.*—The borrowing seems to have been rather gratuitous. Debtor's relatives had either to suffer or to allow him to lose his employment. The case was a fit one for instalments.

#### CASE No. 37.

*Debtor.*—Karamsetti Kotilingam Chetti, Madras.

*Suit.*—No. 265 of 1913, High Court, Madras, for possession of a house. Decree for possession plus costs Rs. 170-14-0.

*Execution.*—(i) Arrest warrant, 20th February 1914 : debtor not found.

(ii) Debtor arrested 2nd March 1914 for Rs. 205-14-0. Released 1st September 1914, owing to non-payment of batta.

*Further particulars.*—The inquiring officer writes :—“ This man though young in age [his age is given in the Jail Register as 19] is old in vicious pursuits, such as drinking, debauchery, borrowing debts at usurious rates of interest, frequenting plays with bad company, etc. His adoptive father left him a house in Perumal Mudali Street and ready cash. He has disposed of the house [*vide* subject-matter of the suit] and squandered all his money by leading a life of dissipation. The debtor was on account of non-payment of batta released a day before the expiry of time. I am satisfied by enquiries that the debtor has made a thorough wreck of himself and is a pauper without means to pay the debt. It was only a couple of days previous to the arrest in this case that he was released from the civil jail where he had been placed for non-payment of a debt due to one Shanmugam Chetti. He has still got other debts to the extent of Rs. 7,000 or Rs. 8,000. The debtor says that for want of the necessary fees, etc., he did not apply to be made an insolvent ; but it seems to me that he has no sense of shame at all and that he finds it more convenient to live in the civil jail at the expense of his creditors.”

*Commentary.*—In such a case restriction of imprisonment would benefit the creditor by saving him from fruitless efforts to extort payment. Though the decree under which this young man was last imprisoned was not a money-lender's one, there can be no doubt that his ability to borrow to the extent stated was largely due to the facilities for recovering money offered by imprisonment.

## B.—COIMBATORE CASES.

## CASE No. 38.

*Debtor.*—Palani Goundan, cultivator, Karuvampalagam, Palladam.

*Suit.*—S.C. No. 702 of 1913, District Munsif, Tiruppur, by a Nattukottai Chetti on a promissory note for Rs. 10, dated 7th November 1909, interest 6 annas *per mensem* (45 per cent.). Decree for Rs. 23-2-0 + Rs. 4-14-0, dated 20th January 1914.

*Execution.*—(i) Arrest warrant : Debtor not found:

(ii) Debtor arrested 31st August 1914 for Rs. 37-15-1. Released 1st October 1914 for non-payment of batta.

*Further particulars.*—Debtor borrowed the money for living expenses. He has a house, garden and other land worth Rs. 500, all under mortgage, his debts exceeding Rs. 500. No part of the decree amount has been paid.

*Commentary.*—The interest was high as the security was poor, no surety being provided. The amount now due is nearly four times the original loan. Nothing was gained by imprisoning the debtor, and he would probably not have been imprisoned had the court inquired into his circumstances.

## CASE No. 39.

*Debtor.*—Masa Goundan, agricultural cooly, Valayapalayam, Palladam.

*Suit.*—O.S. No. 1343 of 1913, District Munsif, Tiruppur, by a Nattukottai Chetti, on a promissory note for Rs. 100, dated 23rd October 1911, interest 36 per cent., two signatories, Rs. 7-8-0 paid. Decree for Rs. 159 + Rs. 20-12-0, dated 16th February 1914.

*Execution.*—(i) Arrest warrants against both defendants. Neither found.

(ii) Debtor arrested 19th August 1914 for Rs. 197-2-1. Released 1st September 1914 owing to non-payment of batta.

*Further particulars.*—Debtor signed as surety for a relative, who borrowed the money to buy cattle with. The relative has no property, and made himself scarce, so debtor was arrested. He has a house and land together worth Rs. 200, which he mortgaged some years ago for Rs. 150 and has not since paid any part of the interest. The decree is still unsatisfied.

*Commentary.*—The security for this loan was no doubt the power possessed by the lender to imprison the debtors. It however failed in this case. As so frequently happens, the surety was the man who suffered. He had no unencumbered assets, and the court might have refused, after inquiry, to send him to jail.

## CASE No. 40.

*Debtor.*—Rama Mudaliyar, Kaikkola, weaver of Bhavani, Coimbatore.

*Suit.*—No. 1 of 1914, Village Munsif's Court, Bhavani, by Ramanadhan Chetti of Senkagari, Salem, for paddy supplied. Decree for Rs. 20 + Rs. 3-11-0 costs, dated 15th January 1913.

*Execution.*—(i) Arrest warrant. Debtor not found.

(ii) Arrest warrant (Rs. 28-7-0). Arrested 19th March 1914, released 29th April 1914, on expiry of time.

*Further particulars.*—The creditor sued for Rs. 20, to bring the suit within the Village Munsif's jurisdiction, though the account was for Rs. 23 odd. The debtor bought the paddy in order to husk it and sell the rice. He owned a house worth about Rs. 300, and a loom, weaving appliances and household effects worth Rs. 25. His debts roughly counterbalanced his assets. In order to defraud his creditors he effected a *benami* sale of his house to his married daughter, gave her the moveables, and has been living in her house. Since his release his daughter is said to have sold the house to a third party for Rs. 300, and to have given the debtor the proceeds. He now weaves for a daily wage which amounts to about Rs. 8 a month. He states that he did not apply to be declared insolvent as he intends to repay his debts some time or other. The creditor imprisoned him in the hope that his daughter would pay the debt, but he was disappointed. The debtor, writes the Tahsildar, "went to jail and has come out smiling. He has the air of a man who considers himself to have finally triumphed over his enemy."

*Commentary.*—Even imprisonment, which was fully justified, failed in this case,—a rare instance of a man who might have secured his release undergoing the full term of confinement.

## CASE No. 41.

*Debtor.*—Kuppana Goundan, Vellala, agricultural cooly of Nallagoundenpalayam, Gobichetti-palayam.

*Suit.*—S.C. No. 466 of 1913, District Munsif, Tiruppur, by Karichi Goundan, of above village, on a simple bond for Rs. 15, being an advance made to defendant who agreed to work on plaintiff's land at daily wages for one year, redeeming the bond at termination. If service terminated earlier, interest at As. 8 *per mensem* (40 per cent.) to be paid. Decree for Rs. 22-8-0 + Rs. 15 costs, dated 3rd November 1913.

*Execution.*—Arrest warrant (Rs. 45-15-3). Arrested 12th January 1914, released 21st February 1914 on expiry of time.

*Further particulars.*—Debtor left creditor's service before the year expired, and interest became chargeable. His sole property was a house, which had been mortgaged. On release from jail he alleges that he sold plaintiff the house for Rs. 50 on condition that he paid off the balance of the mortgage debt (Rs. 20) and accepted the remainder in full discharge of his claim. He obtained no documentary evidence of this transaction, which plaintiff denies, and of which the local officers have been unable to obtain any proof.

*Commentary.*—An instance of the device adopted by landholders to secure a hold upon their labourers (compare some of the Tanjore cases, *post*). The court might have ruled, under section 74 of the Contract Act, that the rate of interest charged was penal, and might have reduced it. Imprisonment failed to procure a settlement and, I think, operated harshly, especially as the man was arrested for a sum three times as large as the original advance. It is improbable that the debt has since been paid, as the debtor alleges.

#### CASE No. 42.

*Debtor.*—Angappa Mudaliyar, Kaikkola, agricultural cooly, of Pudupalayam, Gobichetti-palayam.

*Suit.*—S.C. No. 109 of 1914, District Munsif, Tiruppur, by Muttayya Chetti, Gobichetti-palayam, on a promissory note for Rs. 30 executed by debtor and another on 28th February 1911, interest 36 per cent., Rs. 11-14-0 having been paid. Decree for Rs. 23 + Rs. 6-12-0 costs, dated 8th June 1914.

*Execution.*—Arrested 21st August 1914 for Rs. 37-12-1. Released 1st October 1914 on expiry of time.

*Further particulars.*—The money was wanted by debtor's sister's husband, who, jointly with debtor, executed the note. Debtor's only property is a third share, with two undivided brothers, of a house worth Rs. 300, which is mortgaged for that sum. The debt has not been paid, and the creditor intends to proceed against the other executant, as well as to take out execution against debtor's property.

*Commentary.*—One of the numerous cases in which the man who goes to jail is not the man who received the money. The debtor really had no assets, and imprisonment was neither justifiable nor effectual.

#### CASE No. 43.

*Debtor.*—Vaiyapuri Nadan, agricultural cooly, Panakkadu, Palladam.

*Suit.*—S.C. No. 575 of 1912, District Munsif, Tiruppur, on a promissory note for Rs. 30, dated 24th April 1911, interest 36 per cent., executed by two defendants, Rs. 5 paid. Decree for Rs. 42-10-0 + Rs. 7-2-0, dated 13th September 1912.

*Execution.*—(i) and (ii) Arrest warrants against first and second defendants respectively. Defendants not found.

(iii) Debtor arrested 15th September 1914 for Rs. 65-8-2. Released on 1st October 1914, batta not being paid.

*Further particulars.*—First defendant borrowed the money to buy bulls with. Second defendant (debtor) signed the note as surety, and was arrested as first defendant had no property. Debtor had a cart and bulls. His brother-in-law sold one of the bulls for Rs. 50, paid the money to the creditor, and got debtor released. After release debtor paid a further Rs. 10, and creditor agreed to remit the balance (Rs. 5-8-2). He has not yet received a receipt, and it has been ascertained from the court that no certificate of satisfaction of the decree has been filed.

*Commentary.*—Imprisonment of surety in preference to the principal. Creditor evidently knew he had property, and might have attached it. It is too much to expect a surety to pay before execution is issued against him, and in such cases imprisonment without notice is a harsh measure. It looks as if the creditor had now received his dues, and failed to notify the court.

#### CASE No. 44.

*Debtor.*—Papanaiyan, cultivator, Kulipalayam, Palladam.

*Suit.*—O.S. No. 1374 of 1912, District Munsif, Tiruppur, by a Nattukkottai Chetti on a promissory note for Rs. 50, dated 30th June 1909, interest 36 per cent., five signatories, Rs. 18 paid. Decree for Rs. 50-12-9 + Rs. 15-12-0, dated 25th July 1913.

*Execution.*—Debtor arrested 23rd March 1914 for Rs. 82-3-6. Released 22nd September 1914 on expiry of time.

*Further particulars.*—The debtor, who is an illiterate old man of 75, stood surety with two others for a sum of Rs. 50 borrowed by the two principals, belonging to his village, for the purchase of cattle. All five signatories were then sued. The first principal had no property. The second had land worth Rs. 100 and cattle worth Rs. 300, and (it is alleged) paid the Chetti Rs. 34 towards the debt. When the creditor took out execution all defendants except this debtor kept out of the way. On account of his age he was helpless, and was arrested. He asked for time to raise the money, but this was refused. All his property is under mortgage, his assets amounting to Rs. 500 and his debts to Rs. 1,300. He remained in jail for six months. He knew nothing about the insolvency law, so could take no steps under it. The decree has not been satisfied.

*Commentary.*—The case itself is a striking and sufficient commentary on the working of the existing law. The creditor was more than ordinarily ferocious in keeping this old man in jail for six months.

#### CASE No. 45.

*Debtor.*—Nachi Muthu Goundan, cultivator, Virapandi, Palladam.

*Suit.*—O.S. No. 1029 of 1914, District Munsif, Tiruppur, by a Nattukkottai Chetti on a promissory note for Rs. 200, dated 12th July 1911, six signatories. Decree for Rs. 407-5-4 + Rs. 43-6-10, dated 7th August 1914.

*Execution.*—Debtor arrested 25th September 1914 for Rs. 466-4-11. Released 3rd October 1914 on plaintiff certifying satisfaction.

*Further particulars.*—Debtor, with others, signed the note as surety for his brother-in-law who borrowed the money to buy cattle. As soon as he was arrested he paid Rs. 190 into court, and prayed for time, which was not granted. His wife sold some cholam and paid the balance and got him released. He has real property worth Rs. 10,000, and his brother-in-law is a man of some substance. He has a debt of Rs. 500.

*Commentary.*—The debtor paid up as promptly as possible after execution was issued against him, and he could hardly have been expected to pay before, as he was merely a surety. In such cases arrest without notice causes hardship. The creditor might have proceeded against the property.

#### CASE No. 46.

*Debtor.*—Palani Goundan, cultivator, Aramaneputhur, Tiruppur.

*Suit.*—O.S. No. 1002 of 1912, District Munsif, Tiruppur, by a Nattukottai Chetti on a promissory note for Rs. 321-8-0, dated 5th October 1911, interest 36 per cent. executed by debtor and another. Decree for Rs. 347-3-6 + Rs. 37-6-10, dated 1st August 1913.

*Execution.*—(i) Arrest warrant against debtor, who was not found.

(ii) Debtor arrested 19th August 1914 for Rs. 443-8-7. Released 18th September 1914, plaintiff certifying satisfaction.

*Further particulars.*—Debtor's son, Muthu Goundan, borrowed Rs. 200 from plaintiff for the benefit of a third party. Plaintiff got a decree and to save his son from arrest, debtor, together with another relative, executed the suit promissory note to plaintiff. Plaintiff then sued on this and arrested debtor, who remained in jail for a month. His father-in-law then paid the debt, and on release debtor sold some land and repaid him.

*Commentary.*—Affords examples of several bad effects of the existing system,—an original debt (if indeed it was original and not derivative) converted, by pressure of arrest, into a larger one, with high interest, incurred by relatives of the original debtor, one of whom in turn is imprisoned and has to be rescued by another relative; satisfaction of one decree leading directly to the passing of another.

#### CASE No. 47.

*Debtor.*—Pattai Goundan, cultivator, Avarapalayam, Palladam.

*Suit.*—No. 70 of 1915, District Munsif, Tiruppur, by a Nattukottai Chetti on a promissory note for Rs. 200, dated 23rd August 1911, interest 36 per cent. Decree for Rs. 369-5-1 + Rs. 41-7-7, dated 12th August 1914.

*Execution.*—Debtor arrested 24th September 1914 for Rs. 430-15-2. Released 26th September 1914, on plaintiff certifying satisfaction.

*Further particulars.*—Debtor borrowed the Rs. 200 to meet the expenses of his daughter's marriage. When he was arrested his son-in-law paid the decree amount. Debtor has since sold his son-in-law his garden lands for Rs. 2,000, this debt being part of the consideration. Debtor had property worth Rs. 5,000 and has another debt of Rs. 850.

*Commentary.*—The original debt of Rs. 200 in less than three years amounted to Rs. 430, the real price debtor paid for marrying his daughter. The case was a fit one for notice before warrant, when the debtor would have had an opportunity to pay without the intervention of his son-in-law.

#### CASE No. 48.

*Debtor.*—Rangapannadi, cultivator, Kathankani, Dhārāpuram.

*Suit.*—O.S. No. 418 of 1914, District Munsif, Erode, on a promissory note for Rs. 50, dated 15th December 1913, interest 18 per cent., two signatories. Decree for Rs. 51-14-0 + Rs. 6-14-5, dated 2nd April 1914.

*Execution.*—Debtor arrested 29th September 1914 for Rs. 70-2-5. Released 3rd October 1914, plaintiff certifying satisfaction.

*Further particulars.*—Debtor borrowed the money for cultivation expenses. As he is illiterate the creditor, a respectable ryot, required a second name, and one Palaniappa Chetti signed the note. Debtor was arrested, and released on payment of cash Rs. 35 and of a calf value Rs. 20, the creditor foregoing the balance. Debtor, before the officer who made this inquiry, denied that he incurred the debt and asserted that he was unjustly arrested and made to pay; but satisfactory evidence was obtained that the claim was a just one.

*Commentary.*—A lenient creditor and a rascally debtor who deserves no consideration.

#### CASE No. 49.

*Debtors.*—(i) Guruswami Pusari, cultivator, Puthupalayam, Bhavani.

(ii) Thirumalai Reddi, cultivator, Puthupalayam, Bhavani.

*Suit.*—O.S. No. 594 of 1914, District Munsif, Erode, by a Nattukottai Chetti on a promissory note for Rs. 200, dated 26th August 1912, interest 36 per cent., executed by the two debtors and a third person. Decree for Rs. 307-4-0 + Rs. 33-2-9, dated 30th June 1914.

*Execution.*—Second debtor arrested 14th August 1914 for Rs. 350-0-9. First debtor arrested 4th September 1914 for Rs. 361-5-6. Both released 11th September 1914, plaintiff certifying satisfaction.

*Further particulars.*—The money was borrowed and used by first debtor for his son's marriage. The other two persons were induced to sign as sureties. The real debtor, a mean and contemptible rascal, so arranged matters that one of his sureties (second debtor), a man of some substance, was arrested. The surety, however, disappointed expectations by refusing to pay

so that the creditor then arrested the principal. Thereupon the latter's brother paid the decree amount in cash, and both debtors were released. The first debtor has land worth Rs. 4,000 and moveables worth Rs. 400, with a debt of Rs. 500.

*Commentary.*—One of the numerous instances in which the surety system, coupled with indiscriminate imprisonment, leads to abuse. The surety in this case was a man of more substance than the principal, so the creditor needed little persuasion to arrest him. Had the surety not been ready to endure nearly a month in jail the real debtor would have succeeded in making him repay the debt, although having himself the means to do so. The money, be it noted, was borrowed for an object that is a most fruitful cause of indebtedness, largely avoidable,—the celebration of a marriage.

#### CASE No. 50.

*Debtor.*—Palani Goundan, cultivator, Vellalapalayam, Bhavani.

*Suit.*—O.S. No. 1547 of 1912, District Munsif, Erode, by a Nattukottai Chetti on a promissory note for Rs. 38, dated 31st July 1909, interest 36 per cent., executed by debtor and his father. Decree for Rs. 78 + Rs. 9-7-2, dated 25th October 1912.

*Execution.*—(i) Arrest warrant : debtor not found.

(ii) Debtor arrested 30th September 1914 for Rs. 99-5-2. Released 3rd October 1914, plaintiff certifying satisfaction.

*Further particulars.*—The debt was contracted by the debtor's father for domestic expenses. The debtor, who was then only 20 years old, signed the note at his father's bidding. He has land worth Rs. 3,000 and a house worth Rs. 200, but the land is mortgaged for Rs. 1,000. He has also two pair of bulls, which he might have sold to liquidate the debt, but to do so would have deprived him of the means to cultivate his land. There is another decree outstanding against him for Rs. 250 obtained by the same creditor also for a debt contracted by debtor's father. When he was imprisoned his uncle satisfied the present decree in cash. Debtor has promised to repay the uncle from cultivation proceeds, but no definite terms as to repayment have been arranged.

*Commentary.*—The Chetti obtained the son's as well as the father's signature to save himself trouble should the latter die before repayment. The transaction was an extortionate one, the debt becoming doubled in three years. Short of selling his land (already encumbered) the debtor was without the means to pay. His cattle were exempt from attachment under section 60 (1) (b) of the Civil Procedure Code. The result of arrest was to involve another member of the family who was in no way liable.

#### CASE No. 51.

*Debtor.*—Paruvachi Chetti, cart driver, Kondareddipalayam, Bhavani.

*Suit.*—O.S. No. 944 of 1910, District Munsif, Erode, by a Nattukottai Chetti on two promissory notes for Rs. 150 and Rs. 250, respectively, dated 15th February 1909 and 5th April 1909, interest 36 per cent., both notes executed by two defendants, viz., Nachi Muthu and debtor. Decree for Rs. 558 + Rs. 60-12-0, dated 9th August 1910.

*Execution.*—(i) Arrest warrants against both defendants : neither found.

(ii) Debtor arrested 3rd September 1914 for Rs. 631-14-0. Released 5th September 1914, plaintiff certifying satisfaction.

*Further particulars.*—The sum of Rs. 400 was borrowed jointly by debtor and Nachi Muthu to buy bulls with. Debtor received only Rs. 100 and bought a pair of bulls. On imprisonment he sold the bulls for Rs. 140, and added to it Rs. 60, which he had earned by cart driving and trading in tobacco. The creditor accepted this Rs. 200 in part satisfaction of the decree, and released the debtor. Debtor has no property of any kind, and other debts amounting to Rs. 200.

*Commentary.*—The debtor acted in a very foolish manner, making himself liable for a debt of Rs. 400 (which amounted at the time of his arrest to Rs. 631-14-0) and benefiting only to the extent of Rs. 100. Probably the Chetti was not willing to lend to him on his unsupported security, a fact of which Nachi Muthu took advantage.

#### CASE No. 52.

*Debtor.*—Kuttipalayathan, weaver, Samballi, Bhavani.

*Suit.*—S.C. No. 870 of 1913, District Munsif, Erode, on a promissory note for Rs. 25, dated 17th June 1912, interest 15 per cent. Decree for Rs. 29-6-6 + Rs. 3-4-0, dated 27th September 1913.

*Execution.*—Debtor arrested, 2nd June 1914, for Rs. 41-13-6. Released 13th July 1914 on expiry of time.

*Further particulars.*—Debtor was trading in cloth, and executed the promissory note for balance due on an account for cloth obtained on credit from plaintiffs. He has no property except a thatched house, worth Rs. 30, which is mortgaged for Rs. 25. The decree amount remains unsatisfied, and he has no means to satisfy it. He knew nothing of insolvency provisions. He is now working as a cooly, his cloth business having failed.

*Commentary.*—The man is a pauper, and no useful purpose was served by imprisoning him, as the court might have ascertained had inquiry been made.

#### CASE No. 53.

*Debtor.*—Govinda Goundan, cultivator, Kururampalayam, Avanashi

*Suit.*—S.C. No. 273 of 1911, District Munsif, Tiruppur, on a promissory note for Rs. 50, dated 6th November 1905, interest 36 per cent., five signatories. Decree for Rs. 61-10-8 + Rs. 9-10-0, dated 28th April 1911.

*Execution.*—Debtor arrested 5th September 1914 for Rs. 105-2-4. Released 7th September 1914, the money being paid into jail.

*Further particulars.*—Debtor and three others originally borrowed Rs. 200, debtor appropriating Rs. 100 to the purchase of bulls. The Rs. 200 was repaid and the suit promissory note was executed in respect of the interest. When arrested debtor satisfied the decree by borrowing Rs. 72 from his brother on a promissory note and by selling two bulls for Rs. 56. Debtor shares land worth over Rs. 2,000 with his brother.

*Commentary.*—The debtor was solvent and able to raise the money when arrested. He would probably have taken the same course had he received a notice under order XXI, rule 37.

#### CASE No. 54.

*Debtor.*—Kadir Sahib, cultivator, Karamadai, Avanashi.

*Suit.*—S.C. No. 1689 of 1913, District Munsif, Coimbatore, on two promissory notes (a) for Rs. 100, dated 6th May 1912, interest 18 per cent., (b) for Rs. 50, dated 10th June 1912, interest 18 per cent. Decree for Rs. 186-10-0 + Rs. 20-6-0; dated 10th November 1913.

*Execution.*—Debtor arrested 15th August 1914 for Rs. 247-0-6. Released 1st October 1914 owing to non-payment of batta.

*Further particulars.*—Debtor borrowed the money to buy bulls for cultivation. There is a dispute between himself and his sons regarding some land, which is in their possession. It is not certain whether he was in a position or not to pay the debt, but he was at any rate unwilling to do so, hoping that the creditor would attach the land in dispute, when the sons' title would be inquired into. No part of the decree has been satisfied.

*Commentary.*—This is probably a case of contumacy, the debtor having his own reasons for desiring that the creditor should attach the land. The creditor no doubt does not wish to involve himself in a disputed claim and accordingly kept the debtor in jail for a month and a half hoping to make him pay.

#### CASE No. 55.

*Debtor.*—Palani Goundan, cultivator, Rayampalayam, Avanashi.

*Suit.*—O.S. No. 214 of 1914, District Munsif, Tiruppur, by a Nattukottai Chetti on a promissory note for Rs. 85, dated 3rd February 1911, interest 36 per cent. Decree for Rs. 146-3-2 + Rs. 17-10-5, dated 8th June 1914.

*Execution.*—Debtor arrested 1st September 1914 for Rs. 183-6-10. Released 3rd September 1914 on plaintiff certifying satisfaction.

*Further particulars.*—The debtor with some others borrowed Rs. 300 some five years ago from plaintiff. They were sued on this debt, and to save execution executed fresh promissory notes, of which the suit promissory note was one. When arrested under this decree, the debtor mortgaged his land for Rs. 200 at 21 per cent. interest and paid the debt. Debtor owns land worth Rs. 1,000, which is mortgaged in all for Rs. 600.

*Commentary.*—The debtor was solvent and managed to pay promptly as soon as imprisoned. The creditor could have attached his land. The debt was the result of a previous suit and execution proceedings.

#### CASE No. 56.

*Debtor.*—Karamudai Nayakar, cultivator, Kuniamuthur, Coimbatore.

*Suit.*—O.S. No. 744 of 1912, District Munsif, Coimbatore, by a nidhi on a promissory note for Rs. 500, dated 17th December 1909, interest  $\frac{1}{2}$  pie per rupee per diem, executed by a principal and two sureties, part-payment of interest made. Decree for Rs. 757-9-0 + Rs. 96-8-0, dated 9th September 1912.

*Execution.*—(i) Arrest debtor not found.

(ii) Debtor arrested 8th April 1914 for Rs. 969-11-1. Released 16th April 1914, debtor giving security to apply within one month to be made insolvent.

*Further particulars.*—Debtor signed as one of the sureties. He obtained no monetary consideration, but was prevailed on to sign as the principal belonged to his village and was at the time of the loan in good circumstances, though he has since become indigent. He applied to be made insolvent after his release, but his son's father-in-law disapproved of this course and paid the nidhi Rs. 500, which was accepted in full satisfaction of the decree. Debtor is to repay the money when he can, but there is no written agreement. He has no property of any kind, and lives by buying paddy daily, which he husks and sells.

*Commentary.*—The true facts regarding the son's father-in-law's connexion with the case may not have been disclosed. Assuming that the version given above is correct, the case is one in which a relative of a debtor has to pay in order to save the debtor from the "disgrace" of insolvency.

The legality of the procedure adopted in this case is open to question. When the debtor was brought before the court on 8th April, he put in a petition under section 55 (4), Civil Procedure Code, tendering a security bond executed by his surety and praying for his release. The decree-holder objected to the sufficiency of the security, and the court considered it necessary to adjourn the hearing to the 16th April to test it. The only course sanctioned by the Code was to commit the debtor to prison in the meanwhile. On the 16th April, the security being approved, the debtor was released upon it, on the analogy of rule 40, order XXI, Civil Procedure Code. Once

committed to jail, however, there is no provision enabling a court to release on security a debtor who presents, or undertakes to present, an insolvency petition. He must remain in jail until an adjudication order has been passed. The difficulty would be met by empowering a court, in cases like this, where an adjournment for inquiry is necessary, to commit the judgment-debtor to the custody of officers of the court.

#### CASE No. 57.

*Debtor.*—Velappa Nayakkan, agricultural cooly, Papanayakkanpalayam, Coimbatore.

*Suit.*—S.C. No. 549 of 1913, District Munsif, Coimbatore, by a nidhi on a promissory note for Rs. 50, dated 19th March 1910, one anna per day per cent. interest (22'8 per cent.) executed by debtor and two sureties, Rs. 45-2-4, repaid. Decree for Rs. 30+Rs. 9-8-0, dated 7th August 1913.

*Execution.*—(i) Debtor arrested and released owing to non-payment of batta.

(ii) Arrest warrant issued but debtor not found.

(iii) Debtor arrested, 11th August 1914, for Rs. 56-8-0. Released, 1st September 1914, owing to non-payment of batta.

*Further particulars.*—Debtor alleges that the sureties alone benefited by the loan, but inquiries show that he himself received the Rs. 50. At the time of execution neither surety was arrested (one was dead) so he was proceeded against, though he had no property. He is at present a gardener earning Rs. 8 a month and living in a rented house.

*Commentary.*—The loan was probably advanced in reliance on the substance of the sureties, who however failed. Debtor was accordingly arrested, although he had no means of payment. Imprisonment failed, and ought to have been disallowed.

#### CASE No. 58.

*Debtor.*—Chikkayya Nayakkan, merchant's clerk, Coimbatore.

*Suit.*—S.C. No. 1218 of 1913, District Munsif, Coimbatore, by a nidhi on a promissory note for Rs. 70 executed by debtor and two sureties, dated 18th January 1911, interest one-eighth of a pie per rupee per day (23'7 per cent.), Rs. 17-8-0 repaid. Decree for Rs. 69-1-10+Rs. 6-8-0, dated 18th August 1913.

*Execution.*—(i) Arrest : batta not paid.

(ii) Debtor arrested, 11th August 1914 for Rs. 88-1-11. Released, 3rd September 1914, on plaintiff certifying full satisfaction.

*Further particulars.*—Debtor borrowed the money to buy a jutka for his brother. He owns a house worth Rs. 400, which he mortgaged for Rs. 150 and thus paid the decree amount. He has other debts amounting to Rs. 200.

*Commentary.*—He was in jail for over three weeks, but whether this was to try the creditor's patience or because he was unable to raise the money earlier is not known. Imprisonment was justified as he was solvent.

#### CASE No. 59.

*Debtor.*—Tirumakkonan, cultivator, Kavundapalayam, Coimbatore.

*Suit.*—S.C. No. 910 of 1913, District Munsif, Coimbatore, by a nidhi on a promissory note for Rs. 50, dated 11th May 1910, interest one anna per day per cent. (22'8 per cent.) executed by debtor with two sureties. Decree for Rs. 80-4-6+Rs. 11-10-0, dated 5th August 1913.

*Execution.*—(i) Arrest warrant : defendant not found.

(ii) Debtor arrested 31st March 1914 for Rs. 107-4-3. Released 3rd April 1914, plaintiff certifying part satisfaction (Rs. 50).

*Further particulars.*—The money was borrowed to buy a cart and pair of bulls. On debtor's arrest the payment was made by a cousin, to whom he has since sold his house and land (worth about Rs. 2,000) in order to pay off his debts (amounting to about Rs. 1,900).

*Commentary.*—Imprisonment was justified and effectual, debtor being solvent.

#### CASE No. 60.

*Debtor.*—K. Rama Ayyar, Brahman, cultivator, Vadugapalayam, Coimbatore.

*Suit.*—O.S. No. 805 of 1913, District Munsif, Coimbatore, by a nidhi on a promissory note for Rs. 1,000 executed by one principal and two sureties, dated 30th May 1912, interest one anna per diem per Rs. 100 (22'8 per cent.), some payments set off. Decree for Rs. 100-6-0, dated 25th March 1914.

*Execution.*—(i) Arrest : debtor escaped from custody.

(ii) Debtor arrested, 12th September 1914, for Rs. 1,122-4-6. Released the same day, plaintiff certifying satisfaction.

*Further particulars.*—The money was borrowed for trading in cotton. On arrest debtor borrowed Rs. 1,000 from his brother-in-law on a promissory note at 12 per cent. interest. The nidhi accepted rather under Rs. 1,000 in satisfaction of the decree. The brother-in-law has not yet been repaid. The debtor has a share in lands and a house worth Rs. 8,000 and money transactions to the extent of Rs. 2,500, his debts amounting to Rs. 13,000. He is thinking of applying in insolvency.

*Commentary.*—The man is certainly insolvent, and might have presented his petition when this decree was passed against him.

#### CASE No. 61.

*Debtor.*—Parattai Moopan, tree-tapper, Thodiyalur, Coimbatore.

*Suit.*—S.C. No. 1862 of 1913, District Munsif, Coimbatore, by a Nattukottai Chetti on a promissory note for Rs. 50, dated 6th November 1910, interest 36 per cent. Decree for Rs. 98-6-0 + Rs. 13-8-0, dated 30 June 1914.

*Execution.*—(i) Arrest warrant : plaintiff took no steps.

(ii) Debtor arrested 15th September 1914 for Rs. 126-15-0. Released 18th September 1914 on plaintiff reporting full satisfaction.

*Further particulars.*—Debtor borrowed the money to pay the rent of a cocoanut tope leased by him. He has no property except a house worth about Rs. 50. When he was arrested his sister paid the decree amount. Debtor hopes to repay her, but there is no definite agreement. He was unwilling to present an insolvency application lest he should damage his reputation and fail to obtain further leases of cocoanut topes.

*Commentary.*—The original debt was probably due to improvidence and the borrowing facilities which even persons of no status are able to command. Debtor was unable to pay the decree amount, and, owing to his arrest, the burden of doing so fell on a relative.

#### CASE No. 62.

*Debtors.*—(i) Venkataswami Nayakkan, cultivator, Sikkadasampalayam, Avanashi.

(ii) Guruvappa Nayakkan, agricultural cooly, Sikkadasampalayam, Avanashi.

*Suit.*—O.S. No. 576 of 1912, District Munsif, Coimbatore, by a nidhi on a promissory note for Rs. 100, dated 8th January 1911, interest one anna per day per Rs. 100, executed by first debtor as principal, second debtor and another as sureties, interest partly paid. Decree for Rs. 123-14-0 + Rs. 14-12-0, dated 31st July 1912.

*Execution.*—Both debtors arrested 27th July 1914 for Rs. 163-9-0. Released 1st September 1914 owing to non-payment of batta.

*Further particulars.*—First debtor borrowed the money to buy bulls with for ploughing. He then owned some land worth Rs. 400 and a house worth Rs. 150. He has since sold these, ostensibly to clear off some other debts, but the sale was to his brothers and may have been fictitious. He has now no property, and the decree amount remains unsatisfied. He states that he has not applied in insolvency as he was told that it would cost Rs. 35 to petition and he cannot afford this. Second debtor states that first debtor owed him Rs. 70, and induced him to sign as surety by promising to pay this debt out of the loan to be obtained ; but he failed to do so. Second debtor is an agricultural labourer without any resources.

*Commentary.*—First debtor's *bona fides* is open to question. He may have fraudulently disposed of his property. The village officers vouch for the fact that second debtor is and has been nothing more than a cooly. The case illustrates the readiness to accept sureties without making inquiries into their substance. Presumably the second surety was also worthless as he was not proceeded against in execution.

#### CASE No. 63.

*Debtor.*—Muttuswami Goundan, cultivator, Kodumudi, Erode.

*Suit.*—O.S. No. 771 of 1914, District Munsif, Erode, on balance of a promissory note for Rs. 2,200, dated 25th August 1913, three executants. Decree for Rs. 1,604-7-8 + Rs. 173-3-0, dated 8th July 1914.

*Execution.*—Debtor (first defendant) arrested 14th August 1914 for Rs. 1,787-8-8. Released 11th September 1914, on payment of decree amount by third defendant into court.

*Further particulars.*—The money was borrowed by debtor and his two uncles for family expenses. Debtor paid his own share of the debt, the balance being due from the uncles who eventually raised the money and got him released. He has a house in Kodumudi worth Rs. 2,000, and says that he has property worth Rs. 4,000 in Cochin. This has not been verified.

*Commentary.*—Imprisonment was justified on the score of the debtor's solvency, but, as is so frequent in such cases, the creditor might have attached property.

#### CASE No. 64.

*Debtor.*—Periyanna Goundan, cultivator, Muthugoundenpalayam, Coimbatore.

*Suit.*—O.S. No. 1583 of 1913, District Munsif, Erode, by a Nattukottai Chetti on a promissory note for Rs. 50, dated 7th August 1912, interest 36 per cent., two signatories. Decree for Rs. 68 + Rs. 8-2-5, dated 14th October 1913.

*Execution.*—(i) and (ii) Arrest warrants taken out : debtor not found.

(iii) Arrest warrant applied for : batta not paid.

(iv) Debtor arrested 29th September 1914 for Rs. 90-0-5. Released 3rd October 1914 on decree-holder recording full satisfaction.

*Further particulars.*—The money was borrowed for family expenses. Debtor, with his undivided father and brother, owns land worth Rs. 1,000, mortgaged for Rs. 200, and a house worth Rs. 1,000. Separately debtor owns land worth Rs. 1,000, mortgaged for Rs. 300 and cattle worth Rs. 200. The amount of the decree was paid by debtor's father from family property.

*Commentary.*—Imprisonment was effectual, but not really necessary to extract the debt.

#### CASE No. 65.

*Debtor.*—Venkatachali Goundan, cultivator, Jallipalayam, Erode.

*Suit.*—O.S. No. 884 of 1914, District Munsif, Erode, on a promissory note for Rs. 240, dated 28th November 1912, executed by three defendants. Decree for Rs. 372-15-6 + Rs. 40-12-5, dated 21st August 1914.

*Execution.*—Debtor arrested 30th September 1914 for Rs. 424-5-11. Released 2nd October 1914 on payment of amount to jailor.

*Further particulars.*—The money was borrowed for domestic purposes, and the debt was paid by debtor's undivided son from family property. Debtor pays an annual assessment of Rs. 150 and has property worth Rs. 4,000. He says that he was suddenly arrested when he had no money with him, as the creditor wished to insult him by sending him to jail.

*Commentary.*—Such a case supplies an argument for prior issue of notice. There was no fear that the debtor would abscond.

#### CASE No. 66.

*Debtor.*—Arumuga Asari, blacksmith, Erode.

*Suit.*—S.C. No. 248 of 1913, District Munsif, Erode, for Rs. 30 being balance of account for bandy saman. Decree for Rs. 30 + 3-4-0, dated 23rd June 1913.

*Execution.*—Debtor arrested 24th February 1914 for Rs. 42-7-0. Released 6th April 1914, on expiry of time.

*Further particulars.*—The debt was contracted in the course of joint business with the decree-holder. Debtor has absolutely no property, and no part of the decree amount has been paid.

*Commentary.*—An indigent debtor who serves his full time.

#### CASE No. 67.

*Debtor.*—Palanivelu, karnam, Periasemur, Erode.

*Suit.*—S.C. No. 197 of 1913, District Munsif, Erode, on a promissory note for Rs. 30, dated 23rd February 1910, interest 15 per cent. Decree for Rs. 43-7-9 + Rs. 4-6-0, dated 31st March 1913.

*Execution.*—Debtor arrested 7th September 1914 for Rs. 58-0-9. Released 16th September 1914, on payment of money into court.

*Further particulars.*—Debtor, jointly with his undivided brother, possesses land worth Rs. 3,000, a house worth Rs. 1,000 and cattle worth Rs. 300, with debts amounting to Rs. 500. The decree amount was paid by debtor's brother from a loan obtained from a rural co-operative bank.

*Commentary.*—The debtor went to jail because he could not find the money immediately he was arrested. If a notice to show cause against arrest had issued, he would probably have paid in time to escape imprisonment.

#### CASE No. 68.

*Debtor.*—Kaniyan, agricultural cooly, Ramasamudram, Erode.

*Suit.*—S.C. No. 716 of 1914, District Munsif, Erode, by a Nattukottai Chetti on a simple bond for Rs. 50, dated 2nd October 1911, two signatories. Decree for Rs. 89 + Rs. 9-4-0, dated 16th July 1914.

*Execution.*—Debtor arrested 10th September 1914 for Rs. 109-2-0. Released 1st October 1914, owing to non-payment of batta.

*Further particulars.*—Debtor signed as surety and received no consideration. He has no property and the decree remains unsatisfied.

*Commentary.*—The Nattukottai Chetti, though he usually insists on a surety, sometimes accepts a man of no substance owing to his reliance on the pressure of imprisonment.

#### CASE No. 69.

*Debtor.*—Palanivelappa Goundan, cultivator, Attayampalayam, Erode.

*Suit.*—S.C. No. 1030 of 1912, District Munsif, Erode, on a promissory note for Rs. 37-8-0, dated 6th October 1909, interest 12 per cent. Decree for Rs. 50 + Rs. 4-12-0, dated 4th November 1912.

*Execution.*—(i) Arrest applied for : plaintiff took no steps.

(ii) Debtor arrested and released at plaintiff's request.

(iii) Debtor arrested 5th September 1914 for Rs. 67-1-0. Released 17th September 1914 on full amount of decree being deposited in court.

*Further particulars.*—The money was borrowed for "household expenses." The family, which is undivided, has land worth Rs. 4,000, houses worth Rs. 1,000, cattle worth Rs. 200 and Rs. 500 out on loan. The amount of the decree was paid by the debtor's brother out of family property. The decree-holder is debtor's brother-in-law, and being on bad terms with him arrested him partly out of spite.

*Commentary.*—The debtor was solvent, and was able to pay within twelve days. He would probably have paid had notice of the application for arrest been served on him, and the brother-in-law's malice would have been baulked.

#### CASE No. 70.

*Debtor.*—Ponnusami, village monigar, Alapalayam, Erode.

*Suit.*—S.C. No. 289 of 1914, District Munsif, Erode, on a bill for cloths supplied, interest at 12 per cent. claimed and admitted. Decree for Rs. 37-9-6 + Rs. 4, dated 6th April 1914.

*Execution.*—Debtor arrested 27th June 1914 for Rs. 50-12-6. Released 7th August 1914 on expiry of time.

*Further particulars.*—The debtor owns, jointly with three brothers, land worth Rs. 1,000 and a house worth Rs. 300. The land is mortgaged for Rs. 500.

*Commentary.*—The debtor was not insolvent, though the property was so circumstanced as not to be available for settling the debt, and probably he underwent the full term of imprisonment for this reason.

#### CASE No. 71.

*Debtor.*—Ammasai Moopen, tree-tapper, Parapalayam, Erode.

*Suit.*—S.C. No. 296 of 1914, District Munsif, Erode, on a promissory note for Rs. 25, dated 5th February 1912, interest 24 per cent., two executants. Decree for Rs. 37-8-0 + Rs. 4-4-0, dated 6th April 1914.

*Execution.*—Debtor (first defendant) arrested 17th August 1914 for Rs. 51-9-0. Released 21st August 1914 on second defendant depositing decree amount in court.

*Further particulars.*—The money was borrowed for household expenses. Debtor, with his four undivided sons, owns land worth Rs. 390 and a house worth Rs. 30. There is another debt of Rs. 100. The decree debt was paid by mortgaging the land for Rs. 100.

*Commentary.*—One debt paid at the cost of incurring a second. The same effect would probably have followed attachment of the land.

#### CASE No. 72.

*Debtor.*—Guruvappa Nayakan, cultivator, Amblipudur, Coimbatore.

*Suit.*—S.C. No. 403 of 1913, District Munsif, Coimbatore, on a bond for Rs. 50, dated 29th October 1910, interest 12 per cent., debt to be liquidated within one year, and 18 per cent. interest to be charged on default. Decree for Rs. 67-15-6 + Rs. 7-8-0, dated 11th September 1913.

*Execution.*—(i) Arrest warrant : debtor released on giving security to appear.

(ii) Debtor arrested 1st August 1914 for Rs. 87-7-2. Released 3rd August 1914, the money being paid into jail.

*Further particulars.*—Debtor and his father-in-law were tenants under plaintiff for ten years or more. They borrowed the money to buy cattle and seed-grain. On debtor's arrest the father-in-law sold some of the produce of the land and paid the debt. They have since taken another tenancy.

*Commentary.*—Debtor had the means to pay, and imprisonment was not undeserved. The creditor might seemingly have distrained the crop.

#### CASE No. 73.

*Debtor.*—Thimmayya Goundan, cultivator, Okkilipalayam, Coimbatore.

*Suit.*—O.S. No. 464 of 1913, District Munsif, Coimbatore, by the liquidator of a nidhi on two promissory notes of Rs. 500 each, dated 10th September 1907, interest 12 per cent., three executants. Decree for Rs. 1,568 + Rs. 162-8-0, dated 22nd October 1913.

*Execution.*—(i) Arrest warrant : debtor not found.

(ii) Debtor arrested 3rd September 1914 for Rs. 1,861-4-6. Released 7th September 1914, at request of plaintiff.

*Further particulars.*—Debtor is a well-to-do ryot having land worth Rs. 16,000 and moveables valued at Rs. 1,000. The suit debt was contracted by him (two friends standing surety) in order to liquidate existing debts, some ancestral and some incurred by debtor as a surety. Apart from this debtor has not needlessly involved himself in debt. When the decree was passed, debtor sold some land to one Esee Goundan, his brother-in-law, the agreement being that Esee Goundan should pay the sale-price to the decree-holder, which he failed to do until debtor was imprisoned.

*Commentary.*—Notice to show cause against imprisonment would in this case almost certainly have settled the matter, and would have saved a respectable man from arrest for another's default.

#### CASE No. 74.

*Debtor.*—Pakkiya Goundan, agricultural cooly, Samur, Erode.

*Suit.*—O.S. No. 200 of 1914, District Munsif, Erode, on a promissory note for Rs. 50, dated 2nd September 1911, interest 36 per cent., five executants, Rs. 30 paid. Decree for Rs. 41-10-8 + Rs. 7-10-9, dated 6th March 1914.

*Execution.*—Debtor arrested 14th April 1914 for Rs. 59-1-5. Released 25th May 1914 on expiry of time.

*Further particulars.*—Debtor signed the note as surety for one Appaji Goundan. He is a cooly and has no property whatever.

*Commentary.*—Imprisonment should have been refused.

#### CASE No. 75.

*Debtor.*—Narayana Nayakan, agricultural cooly, Pulamedu, Coimbatore.

*Suit.*—S.C. No. 411 of 1914, District Munsif, Coimbatore, by a Nattukottai Chetti, on a promissory note for Rs. 100, dated 2nd June 1911, interest 36 per cent., two executants, Rs. 4-8-0 paid. Decree for Rs. 191-6-6 + Rs. 20-8-0, dated 11th June 1914.

*Execution.*—Debtor (first defendant) arrested 6th August 1914 for Rs. 224-9-9. Released 1st September 1914, owing to non-payment of batta. Second defendant arrested at the same time and released on security on agreeing to pay the decree amount within one month.

*Further particulars.*—Debtor is second defendant's nephew. He borrowed the money for family expenses. He has no property and his uncle, the surety, paid the money according to the above undertaking.

*Commentary.*—The creditor probably kept the debtor in jail in order to increase the pressure on the surety. The court could have refused to imprison him.

#### CASE No. 76.

*Debtor.*—A. Thirumulaswami Nayudu, trader, Coimbatore.

*Suit.*—O.S. No. 474 of 1913, District Munsif, Coimbatore, by a Nattukottai Chetti, on a promissory note for Rs. 750, dated 23rd September 1910, interest 12 per cent., Rs. 130 paid. Decree for Rs. 870 + Rs. 88, dated 20th August 1913.

*Execution.*—Debtor arrested 12th August 1914 for Rs. 1,024-6-0. Released 1st September 1914, owing to non-payment of batta.

*Further particulars.*—Debtor borrowed the money from one Venkatasulu Nayudu for trading. The creditor transferred the promissory note to the Nattukottai Chetti who sued on it. Debtor's trade failed and he had no means of paying the decree amount.

*Commentary.*—Debtor should have been given an opportunity of proving his indigence before being committed to jail.

#### CASE No. 77.

*Debtor.*—Kullan, agricultural cooly, Papanaikenpudur, Coimbatore.

*Suit.*—S.C. No. 273 of 1914, District Munsif, Coimbatore, on a promissory note for Rs. 185, dated 29th March 1912, interest 12 per cent., two executants, Rs. 90 paid. Decree for Rupees 116-3-4 + Rs. 14-4-0, dated 15th June 1914.

*Execution.*—(i) First defendant arrested and released on payment of Rs. 30.

(ii) Debtor (second defendant) arrested 4th August 1914 for Rs. 139-5-8. Released 1st September 1914, owing to non-payment of batta.

*Further particulars.*—Debtor did not himself borrow the money but signed the note as surety for first defendant. He lives by working as a cooly and has no property of any kind nor other debts. All his relatives are in poor circumstances.

*Commentary.*—Those who contend that creditors do not keep in jail debtors who cannot pay would perhaps dismiss this case with the remark that the debtor was let out at the end of the first month, and that since he chose to get into debt the penalty he had to pay was not an unduly severe one. My reply is that it is indefensible to imprison a pauper debtor, who probably has a family dependent upon his daily exertions, even for twenty-seven days, and that but for the power to imprison him he would probably not have been asked to back the bill.

### C.—TANJORE CASES.

#### CASE No. 78.

*Debtor.*—Dharma Panikam, agricultural cooly, Tanjore.

*Suit.*—No. 1838 of 1912, District Munsif, Tanjore, by Chinnana Pillai on a bond for Rs. 20, dated 18th May 1910, interest 18 per cent., executed by debtor, his son Muthuviran Panikam and another. Decree for Rs. 29-12-4 + Rs. 6, dated 30th August 1912.

*Execution.*—(i) Application for arrest of debtor and his son. Debtor released for non-payment of batta; son not found.

(ii) A similar application, son not found, debtor arrested 2nd March 1914 for Rs. 50-7-8. Released 13th March 1914, plaintiff certifying satisfaction.

*Further particulars.*—Debtor was employed by plaintiff as an agricultural labourer, and borrowed the money to celebrate his son's marriage. Later he left plaintiff's service, and the latter then sued him for the amount in the hope, it is said, that debtor would return to service under him. Debtor's brother, however, "purely out of affection," borrowed the required sum and paid the decree debt. There was no arrangement between the brothers as to repayment, and it is unlikely that the money will be paid.

*Commentary.*—This case illustrates the following account of conditions existing in Tanjore for which I am indebted to Mr. E. H. Wallace, I.C.S., District Judge :—

"There is a class of cases frequently coming up before the civil courts in this district under a system which is akin to those you mention in its operation in placing the cultivating tenants in a state of perpetual bondage and reducing them to a condition of serfage. These are mostly suits based on bonds executed by tenants to their landlords. A short account of the conditions under which the tenant in this district is tied down to the soil of the landlord may be of assistance to you.

The chief difficulty which confronts the mirasidar in this district is scarcity of labour and in order to secure good and willing tenants he has a *manai* (house site) to offer to the tenant to live in. This *manai* is generally on or near the land which the tenant undertakes to cultivate. These tenants, *purakudis* as they are called, erect superstructures on the *manai* at their own cost and are allowed to live in them (and this they do from generation to generation) so long as they render service to the landlord. Besides this method of binding the tenants to him for their lives, he makes advances to them for cultivation expenses and gives loans of pretty large sums on occasions of marriages, funerals and the like. Bonds are taken from the tenants, but the loans and advances ordinarily carry no interest so long as the tenants continue to render service. An exorbitant rate of interest is however charged when they try to quit it. Under such conditions the tenant is fairly securely tied down. Sometimes the tenant is rebellious and denies the title

of the landlord to the *manai* and refuses to surrender possession. The landlord in such a case perforce brings a suit in ejectment for the recovery of the *manai* and for the debts due by the tenant which now carry on exorbitant rate of interest, and the process of arrest is availed of to coerce him. The recalcitrant tenant if he persists has to remove his superstructure and find means to pay off his debt. Sometimes he quits service himself to seek service under a new landlord, and in these cases the decree obtained is of little value to the former landlord as the tenant finds a ready lender in his new master who equips him with money to satisfy the decree debt. The tenant in such a case is no more free under the new master than under his old landlord. Very often a landlord conveys his property to another and one finds in the sale deeds a claim assigning to the purchaser sums due from the various cultivating tenants to the vendor. . . . It will be apparent from the above that the relationship of landlord and tenant will not exist while a decree is being executed. It is only when the tenant rebels, secedes from service or betakes himself to foreign lands that the bond is put into court and a decree is obtained. The existence of a decree may therefore be taken as implying a severance of all relationship of landlord and tenant. It rarely happens under the conditions described that a tenant shifts his allegiance. He is thus tied down to the soil and labours for his master with an oppressive debt over his head and becomes practically a bondsman attached to the land."

#### CASE No. 79.

*Debtor*.—Narayana Padayachi, agricultural cooly, Kolukuthi, Māyavaram.

*Suit*.—S.C. No. 1297 of 1913, Sub-Judge, Māyavaram, on a bond for Rs. 137-13-6, dated 9th September 1909, interest to 7th April 1910 at 12 per cent. and thereafter at 18 per cent., executed by four defendants who were plaintiff's tenants in respect of balance of varam account, and account for paddy due. Decree for Rs. 211-12-6 + Rs. 22-12-0, dated 22nd September 1913.

*Execution*.—(i) Arrest warrant against four defendants, who were not found.

(ii) Arrest of debtor (second defendant), who was not found.

(iii) Debtor arrested 23rd March 1914 for Rs. 262-10-3. Released 30th April 1914, owing to non-payment of batta.

*Further particulars*.—Debtor and the three other defendants leased some land from plaintiff on varam. The yield was poor, and the lessees were unable to pay the whole rent (paddy) due. They accordingly executed the suit bond for the balance. Debtor when arrested was working as a cooly and had no property whatever. Asked why he did not petition in insolvency he replied that he had no funds to meet the expenses of that course. No part of the decree amount has been paid.

*Commentary*.—A wholly indigent debtor imprisoned for over five weeks.

#### CASE No. 80.

*Debtor*.—Ramaswami Padayachi, cultivator, Māyavaram.

*Suit*.—S.C. No. 1273 of 1913, Sub-Court, Māyavaram, by one Doraiswami Ayyar, adopted son of Ramaswami Ayyar, on an account disclosing a balance of Rs. 219-9-7 due by debtor in respect of transactions entered into while tenant of Ramaswami Ayyar. Plaintiff claimed principal plus Rs. 373-4-0 (interest at 12 per cent. from date of execution of bond) and forewent Rupees 92-13-8 to bring suit within Sub-Judge's summary powers. Claim accordingly for Rs. 499-15-11. Debtor pleaded settlement of account. Court found for plaintiff and decreed Rs. 499-15-11 + Rs. 49-4-0, dated 30th April 1914.

*Execution*.—Debtor arrested on 2nd November 1914 for Rs. 593-11-2. He was in jail when I examined him (19th November 1914) and has since been released owing to non-payment of batta.

*Further particulars*.—Debtor and his family were for nearly three generations tenants (*parakudis* under the varam system) of Ramaswami Ayyar. From time to time these tenants received advances from the landlord for plough bulls, seed grain, marriages, etc. Debtor left Ramaswami Ayyar's service some fifteen years ago and took up land under one Kuppuswami Ayyar. Two years ago plaintiff tried to persuade debtor to return as tenant, but debtor refused. The suit was then brought. The original claim is probably genuine. The interest charged is exorbitant in amount, delay in suing being excessive. Debtor, when arrested, had no property "except two old buffaloes which nobody would buy."

*Commentary*.—Illustrative of the practice described under Case No. I. The court should have disallowed imprisonment. In such cases the creditor probably resorts to it from motives of revenge.

#### CASE No. 81.

*Debtor*.—Virappan, pariah, cultivator, Shiyali.

*Suit*.—S.C. No. 560 of 1903, District Munsif, Shiyali, on a bond executed by debtor and his brother to plaintiff, in consideration of money lent to defray the brother's marriage expenses. The brothers to work on plaintiff's land and, so long as they do so, no interest to be charged. Claim for Rs. 31-9-6 and decree for this sum plus Rs. 4-14-0, dated 14th October 1903.

*Execution*.—(i) Attachment and arrest warrants applied for but not proceeded with.

(ii) Debtor arrested on 4th September 1914 for Rs. 72-2-6. Released on 16th October 1914 on expiry of time.

*Further particulars*.—Debtor and his brother worked under plaintiff for three years. As they then left his service he sued on the bond. Debtor when arrested had no property whatever as the creditor must have known. He had no knowledge of the law of insolvency.

*Commentary.*—Imprisonment is used in such a case as this to compel the debtor to return to the creditor's service. Here however the debtor preferred to serve his full time to doing so. It is a mockery to refer to the insolvency law where the debtor is, as here, a panchama pauper.

#### CASE No. 82.

*Debtor.*—Saravanai Pillai, cultivator, Shiyali.

*Suit.*—O.S. No. 16 of 1903, District Munsif, Shiyali, for arrears of rent due to plaintiff's husband. Decree for Rs. 1,046-13-4, dated 1st April 1903.

*Execution.*—(i) Fourteen executions, 10 for arrest, 4 for attachment of moveables, nothing realised.

(ii) Debtor arrested 16th January 1914 for Rs. 1,898-10-0. Released 16th July 1914 on expiry of time.

*Further particulars.*—Prior to the suit debtor had been plaintiff's husband's tenant on an annual rent of 450 kalams of paddy and Rs. 50 in cash. Debtor previously owned some land in Shiyali taluk, but sold it before the suit to pay some debts. At the time of arrest he had no property.

*Commentary.*—The creditor has unsuccessfully pursued this man in execution for eleven years, and now after imprisoning him for six months without effect will have to abandon the effort as the period of limitation expires on 1st April 1915.

#### CASE No. 83.

*Debtor.*—Pattan Samban, village servant, Mannārgudi.

*Suit.*—No. 868 of 1913, District Munsif, Mannārgudi, on a bond for Rs. 25, dated 7th June 1910, being money advanced to defendant to discharge debts in consideration of defendant and his wife working for plaintiff, who also grants *manai* (house-site). If defendant leaves service, interest at 36 per cent. chargeable. Defendant left service on 1st September 1910. Suit filed 20th August 1913. Decree for Rs. 49-15-11 + Rs. 8-14-0, dated 22nd September 1913.

*Execution.*—Debtor arrested 14th April 1914 for Rs. 67-4-0. Released 1st July 1914 for non-payment of batta.

*Further particulars.*—Debtor had no property except 12 cents of land, fully mortgaged, which was sold for Rs. 36 and the mortgage redeemed a few months ago. He was unaware of the terms of the bond or that he would be charged interest on leaving plaintiff's service. No part of the decree amount has been paid.

*Commentary.*—*Vide* remarks under case No. 78.

#### CASE No. 84.

*Debtors.*—1. Govindavelan } cultivators, Thamarankote, Pattukkottai taluk.  
2. Chinnatambivelan }

*Suit.*—S.C. No. 154 of 1910, Deputy Collector, Pattukkottai, for melvaram due by the five defendants holding under patta. Decree for Rs. 217-10-9 + Rs. 28-13-0, dated 16th July 1910.

*Execution.*—Debtors arrested 7th October 1914 for Rs. 320-2-9. Released on payment of decree amount.

*Further particulars.*—Defendants in the suit were brothers and tenants of certain co-inamdars. Owing to a dispute between these inamdars they refused to pay rent, and persisted in their refusal after the inam village was taken charge of by a receiver appointed by the Court. The receiver accordingly sued, and the decree was executed by the party to whom the land fell in the suit for partition. Debtors meanwhile sued this man, desiring to set aside the revenue decree for rent, and their refusal to pay the rent, although imprisoned, was due to this dispute. They were still in jail when I examined them on 20th November, but have since borrowed the necessary money and paid the decree amount. They have property worth Rs. 4,000 or Rs. 5,000.

*Commentary.*—A case of contumacy successfully dealt with by imprisonment.

#### CASE No. 85.

*Debtor.*—Karattan Samban, agricultural cooly, Kumbakōnam.

*Suit.*—S.C. No. 2844 of 1913, District Munsif, Kumbakōnam on a promissory note for Rs. 37-8-0, dated 18th March 1907, in respect of paddy due from defendant as sub-tenant. A previous promissory note for Rs. 10-8-0, dated 12th March 1906, on similar account is superseded by this note. Interest 12 per cent. Repayment of Rs. 6 made. Decree for Rs. 60-14-0 + Rs. 13-2-0, dated 2nd February 1914.

*Execution.*—Debtor arrested 28th March 1914 for Rs. 82-2-6. Released 9th April 1914 on satisfaction of the decree by a cash payment of Rs. 10 and execution of a promissory note for Rs. 74-10-11, interest 18 per cent., by three persons.

*Further particulars.*—The suit debt mainly represented the accretions of interest on the original loan for rent due to debtor's previous landlord. The decree was satisfied by (a) payment of Rs. 5 obtained from sale of straw, (b) payment of Rs. 5 obtained from debtor's present landlord's wife, (c) execution of a promissory note for Rs. 74-10-11 by debtor's sons and nephew. Debtor, a panchama labourer, has a hut on the *manai* of his present employer and a few earthen vessels.

*Commentary.*—Release purchased at the cost of further indebtedness, the new loan bearing a higher rate of interest. The former landlord allowed the debt to go on growing and took no

steps until the debtor left him. The new landlord's wife's action was probably not entirely disinterested. It was no case for imprisonment.

#### CASE No. 86.

*Debtor.*—Sebastian Samban, cultivator, Pariah Street, Kumbakōnam.

*Suit.*—S.C. No. 1033 of 1912, Sub-Judge, Kumbakōnam, on a bond for Rs. 18, dated 6th July 1912, plus 14 kalams and 4 marakals paddy. Interest 3 pies per rupee *per mensem* ( $18\frac{3}{4}$  per cent.) to 6th July 1913 and thereafter 6 pies per rupee *per mensem* ( $37\frac{1}{2}$  per cent.): two signatories, father and undivided son (debtor). Decree for Rs. 114-14-0 + Rs. 13-4-0, dated 19th September 1912.

*Execution.*—Debtor (second defendant) arrested 26th August 1914 for Rs. 148-6-4. Released 1st September 1914, owing to non-payment of batta.

*Further particulars.*—Money was spent on a bull for ploughing, and the paddy used for seed. The bull died. Both defendants formerly worked on plaintiff's land, and left his service three years ago, whereupon the suit was filed. They have no property except a thatched shed worth Rs. 4, nor any relatives capable of paying the debt. They work as daily coolies.

*Commentary.*—The creditor evidently soon made up his mind that it was no use pressing further for payment. Penal interest within the meaning of section 74 of the Contract Act was levied on the debt.

#### CASE No. 87.

*Debtor.*—Pakkira Samban, agricultural cooly, Nogaltur, Nannilam.

*Suit.*—S. C. No. 1770 of 1912, District Munsif, Tiruvalur, an account of two loans (a) Rs. 30 advanced on 26th April 1879 on account of defendant's first marriage, he undertaking to serve plaintiff's father, (b) Rs. 20 advanced on 20th April 1884 on account of defendant's second marriage. Plaintiff states that defendant served under plaintiff's father and plaintiff until June or July 1912. No documentary evidence given of loans. Plaintiff claimed only Rs. 49-15-0 to bring suit within small cause jurisdiction. Decree (*ex parte*) for Rs. 49-15-0 + Rs. 7-4-0, dated 9th December 1912.

*Execution.*—(i) Attachment: no property found.

(ii) Attachment: no steps taken.

(iii) Debtor arrested, 17th August 1914 for Rs. 73-11-2. Released, 1st September 1914, owing to non-payment of batta. No money recovered.

*Further particulars.*—Debtor and his parents worked under plaintiff's family as farm tenants for many years. Debtor states that he personally never received any money from plaintiff's father, and that the suit debt was contracted before he was born. (His age is given in the Jail Register as 45, and the first transaction, ostensibly on account of his marriage, took place 36 years ago). In 1912 debtor left plaintiff's service on the score of insufficient wages. Plaintiff then sued him with the result above-noted. Debtor earns monthly  $2\frac{1}{2}$  kalams paddy (about Rs. 5) and has no property.

*Commentary.*—I extract the following from the Tahsildar's report:—

"The decree was an *ex parte* one" [and based, I may add, on oral evidence] "and probably the court did not make any elaborate inquiry about the date when the debt was contracted and whether the action was time-barred. From the plaintiff's own statement before me, it appears to me that the debt became long ago time-barred. How the acknowledgment of debt was kept alive for two generations, so as to enable the plaintiff to sue for it in 1912 (the debt having been contracted forty years previously) is a mystery. There is a significant admission by the plaintiff in his statement before me, viz., that he would not have filed the suit if the defendant had continued to serve under him as *pannyal*. I am not aware how the civil law stands in such matters; but I feel bound to say that this is a typical case of oppression of the labourer by the landlord, resorted to for enforcing labour out of revengeful motives, because the poor pariah had the impudence to free himself from the landlord's service (slavery, if I may say so) and to depend on his own resources for his daily meal."

Here indeed we see the working of the Civil Court in a painfully unfavourable light. It is not part of my duty to scrutinize the foundations of decrees, but it would seem that, on the score of law and probably also of fact the decree, had defendant been in a position to contest the suit, would not have been passed. Once passed it was used by the decree-holder to oppress this unfortunate cooly, who might have been kept in jail for six months, like the debtor in case No. 82 had the creditor cared to afford the subsistence allowance.

#### CASE No. 88.

*Debtor.*—Kumeran Samban, cultivator, Kumbakōnam.

*Suit.*—No. 5 of 1911, Village Munsif's Court, Māyavaram, for Rs. 8-9-8 being arrears of rent due to plaintiff Muthuswami Ayyar. Decree for Rs. 8-9-8, dated 20th March 1911.

*Execution.*—(i) Arrest applied for, 21st March 1913. Application returned for amendment.

(ii) Debtor arrested 30th September for Rs. 14-1-0. Released 11th November 1913, on expiry of time.

*Further particulars.*—The debtor's presence could not be procured, but local inquiry showed that he was cultivating some land and owned bulls worth Rs. 50. The decree has not been satisfied.

*Commentary.*—The inquiry was not conclusive, but it is probable that such property as the debtor, who is a Panchama, had would have been exempt from attachment under section 60 (b) and (c) Civil Procedure Code. That is the only explanation of the decree-holder's omission to attach it. He wanted debtor to give up to him what the law prevents him from seizing directly. The execution costs in this case amounted to 63 per cent. of the sum decreed.

## CASE No. 89.

*Debtor.*—Sevathiyan Samban, cultivator, Valakuḍi, Kumbakōnam.

*Suit.*—S.C. No. 2730, District Munsif, Kumbakōnam, on a promissory note for Rs. 35-14-0, dated 11th March 1906, interest 12 per cent., on account of paddy due to plaintiff. Rs. 7 repayments made. Defendant pleaded discharge by delivery of 60 bundles straw and 3 kalams paddy. Decree for Rs. 61-11-0 + Rs. 16-2-0, dated 2nd February 1914.

*Execution.*—(i) Arrest warrant, 24th March 1914 : debtor not found.

(ii) Debtor arrested, 17th June 1914 for Rs. 88-3-0. Released 26th June 1914, decree-holder certifying satisfaction.

*Further particulars.*—The suit debt represented paddy due by debtor to plaintiff, his landlord. On debtor's arrest his son raised Rs. 5 by selling his mother's ear ornament, and debtor borrowed Rs. 60 from one Ibramsa Rowther. Decree-holder accepted the Rs. 65 in full satisfaction. Debtor repaid Rs. 30 to the Rowther by sale of straw, and is now working as his tenant. Debtor has a hut (on the Rowther's *manai*) worth Rs. 25, cattle worth Rs. 50, and other moveables worth Rs. 25, with debts amounting to Rs. 30.

*Commentary.*—Another instance of a tenant passing from the bondage of one master to that of another. Presently he will be sued and imprisoned by the Rowther, and so the process continues. Excluding articles exempt from attachment, debtor had nothing to pay the debt with, and he ought not to have been imprisoned.

## CASE No. 90.

*Debtor.*—Appaswami Asari, carpenter, Adutorai, Kumbakōnam.

*Suit.*—S.C. No. 981 of 1911, District Munsif, Valangiman, on a promissory note for Rs. 26-5-0, dated 20th September 1908, interest 12 per cent., two executants. Decree for Rs. 35-11-0 + Rs. 7-4-0, dated 26th October 1911, against second defendant.

*Execution.*—Debtor arrested 14th November 1914 for Rs. 55-11-6. Released 1st December 1914, owing to non-payment of batta.

*Further particulars.*—Debtor worked as a carpenter under plaintiff for four months, and borrowed Rs. 25 from him for his marriage expenses. He has no property of any kind, and lives on his daily wages as a carpenter. The decree remains unsatisfied.

*Commentary.*—All that imprisonment did here was to transfer the cost of debtor's maintenance during fifteen days from himself to his creditor. If the court had ordered payment by small monthly instalments there would have been some point in imprisoning the debtor had he failed to pay according to the order.

## CASE No. 91.

*Debtor.*—Ratna Padayachi, cultivator, Manikudi, Kumbakōnam.

*Suit.*—S.C. No. 1089 of 1908, Sub-Court, Kumbakōnam, by one Siva Ramakrishna Ayyar against debtor (second defendant) and his brother Ponnuswami Padayachi for (i) Rs. 115-4-9 being value of cash and paddy due on *varam* account, and (ii) Rs. 28-7-3, being Rs. 25 advanced to first defendant for purchase of cattle, *plus* interest. No documentary evidence produced. Defendants denied the claim, ascribing the suit to their refusal to work under plaintiff as tenants. Decree for Rs. 120 by consent, dated 22nd December 1908.

*Execution.*—Debtor arrested on 8th October 1914 for Rs. 205-7-0. Released on 1st February 1915 owing to non-payment of batta.

*Further particulars.*—The two brothers, and their father before them, had worked under plaintiff as *varam* tenants. The only money advanced to them was Rs. 25 for the purchase of cattle, which, first defendant alleges, were handed over to plaintiff when he left his employment. After getting his decree plaintiff imprisoned first defendant for six months, but got nothing out of him. Subsequently he imprisoned debtor as above. Neither has any property, and each is now working as an agricultural cooly. The decree remains unsatisfied.

*Commentary.*—Another case typical of the landlord's methods. Here he imprisoned both brothers for long periods, though there can have been little prospect of getting money out of them. The claim was based entirely on plaintiff's oral statements, and obviously he might have claimed any sum he pleased.

## CASE No. 92.

*Debtor.*—Rajendra Samban, cultivator, Melakurukai, Kumbakōnam.

*Suit.*—S.C. No. 67 of 1913, District Munsif, Kumbakōnam, on a bond for Rs. 12-8-0, dated 14th May 1914, interest 18 per cent. for one year and 24 per cent. thereafter, repayments made being Rs. 3-8-0 (two kalams of paddy) on 27th October 1907 and Rs. 5-4-0 credited on 17th April 1910 in respect of service under plaintiff. Decree for Rs. 24 + Rs. 4-6-0, dated 28th January 1913, *ex parte*.

*Execution.*—Debtor arrested on 23rd July 1914 for Rs. 38-9-6. Released on 1st September 1914, batta not being paid.

*Further particulars.*—The money was advanced by the landlord to meet debtor's marriage expenses. The suit was brought after debtor left the landlord's service. After release debtor, who has no property, borrowed Rs. 25 from the woman who now employs him, agreeing to serve her for a year, and the decree-holder accepted it in full satisfaction.

*Commentary.*—The settlement here, which involved only the exchange of one creditor for another, cannot be attributed to imprisonment.

## D.—NILGIRIS CASES.

## CASE No. 93.

*Debtor.*—Munian, cultivator, Hadashola, Ootacamund.

*Suit.*—S.C. No. 167 of 1913, Sub-Court, Ootacamund, claim of Rs. 74 by P. Rahiman Sahib for goods sold and money lent between 25th April 1912 and 12th November 1912. Decree for Rs. 70 Rs. 11-4-0, dated 13th March 1913.

*Execution.*—Debtor arrested on 18th April 1913 for Rs. 85-3-6. Released the same day, plaintiff certifying satisfaction.

*Further particulars.*—Debtor borrowed Rs. 50 from plaintiff for cultivating expenses, and bought some provisions from him on credit. When he was arrested a friend named Muthukaruppan executed a promissory note in plaintiff's favour for the full amount due. Debtor then mortgaged his land ( $3\frac{1}{2}$  acres) to Muthukaruppan who redeemed the promissory note. Debtor has not yet redeemed his debt to Muthukaruppan. Debtor's whole debt, including the mortgage, amounts to Rs. 300.

*Commentary.*—Debtor was not a pauper, and his arrest was justifiable. The effect of imprisonment was however to increase his indebtedness, and he will probably end by losing his land and becoming a cooly.

## CASE No. 94.

*Debtor.*—Kullan, Aruva Badaga, cultivation, Merkanad, Nilgiris.

*Suit.*—S.C. No. 46 of 1904, Sub-Court, Ootacamund, on a promissory note for Rs. 1,050, executed on 10th June 1903, to Mallian, Badaga adhikari, interest 6 per cent. Decree for Rs. 1,115-14-9 + Rs. 114-6-0, dated 3rd August 1914.

*Execution.*—Three arrest warrants, in 1905, 1908 and 1911, not proceeded with (evidently to keep the decree alive). Debtor was arrested on 21st August 1914 for Rs. 1,945 and released on 25th August 1914 on plaintiff certifying full satisfaction.

*Further particulars.*—Debtor's father borrowed Rs. 400 from plaintiff, a relative, some twenty years ago. This debt was represented by four or five successive promissory notes, the last being the suit promissory note for Rs. 1,050 executed by debtor on his father's death. Debtor paid Rs. 200 to plaintiff before the decree, and when the latter took out execution a panchayat was held in the village, and it was decided that plaintiff should accept the original principal of Rs. 400 in full satisfaction. Accordingly debtor paid Rs. 100 in cash, and executed a promissory note for Rs. 100, his son and uncle signing as sureties. The promissory note has since been redeemed. The debtor has no property and is working as a cooly.

*Commentary.*—The case is exceptional, owing to the relationship between the parties. An inquiry would have shown the court that the debtor was quite unable to pay the full sum decreed. On the other hand imprisonment was probably instrumental in securing some payment for the creditor.

## CASE No. 95.

*Debtor.*—F. Abbu Bakar, merchant, Ootacamund.

*Suit.*—S.C. No. 268 of 1912, Sub-Court, Ootacamund, by a Marvari on a promissory note for Rs. 100, dated 7th October 1911, interest  $37\frac{1}{2}$  per cent. Decree for Rs. 115 + Rs. 15-8-0, dated 29th March 1912.

*Execution.*—Three attachments of property. Various sums paid by debtor, leaving a balance of Rs. 19-12-6, for which he was arrested on 19th July 1914, and released on the amount being paid to the bailiff.

*Further particulars.*—Debtor pawned a jewel, worth Rs. 140, to the Marvari for Rs. 120, requiring the money for household expenses. As interest on the debt accumulated he later re-pawned the jewel for Rs. 75 and executed the suit promissory note for the balance (Rs. 100). Eventually the creditor bought the jewel for Rs. 115 (probably the Rs. 75 *plus* interest), and sued debtor on the promissory note. Debtor alleges that he paid plaintiff Rs. 240 in respect of the promissory note, excluding the subsequent payment of Rs. 19-12-6. If so, for the original Rs. 120 received he had to pay approximately Rs. 400. Debtor owns a house in Ootacamund and some land in Sholur, together worth Rs. 5,000, and, with his brother, is indebted to the extent of Rs. 4,000.

*Commentary.*—The debtor managed to pay the small balance to the bailiff when he was arrested. Arrest was justifiable.

## CASE No. 96.

*Debtor.*—Chellan, Panchama, cultivator, Ootacamund.

*Suit.*—S.C. No. 113 of 1913, Sub-Court, Ootacamund, on a promissory note for Rs. 50, dated 6th September 1910, interest 9 pies per rupee per mensem ( $56\frac{1}{4}$  per cent.). Decree for Rs. 117-4-6 + Rs. 15, dated 20th February 1913. Rs. 50 to be paid within one month and the balance in monthly instalments of Rs. 7-8-0.

*Execution.*—Debtor arrested 11th April 1913 for Rs. 137-1-6. Released 16th April 1913, plaintiff certifying full satisfaction.

*Further particulars.*—Debtor and plaintiff jointly rented a piece of land from Fakir Muhammad Sait. Plaintiff supplied the seed potatoes and after two months made debtor execute the promissory note in payment of his share. When debtor demurred to the high rate of interest, plaintiff said that interest must be entered as a formality, but that he would not recover it.

Afterwards the parties fell out, and plaintiff sued on the note. Debtor attempted to prove the oral agreement, but the court passed a decree according to the claim. As debtor had no property of any description he had to go to jail. His brother and brother-in-law then jointly executed a promissory note to plaintiff for Rs. 110 and got debtor released. Debtor has since repaid them by selling potatoes which he has grown on rented land and the promissory note has been redeemed. Debtor has no property of his own.

*Commentary.*—The creditor is under suspicion of having tricked the debtor. The claim was in any case exorbitant. The court rightly ordered payment by instalments, which however debtor failed to pay. He had no property, and his imprisonment led to the entanglement of relatives, though the matter was afterwards satisfactorily settled.

#### CASE No. 97.

*Debtor.*—Pujari Huchan, milkseller, Ootacamund.

*Suit.*—S.C. No. 27 of 1913, Sub-Court, Ootacamund, on a promissory note for Rs. 40, dated 19th February 1910, no interest stated. Decree for Rs. 46 + Rs. 9-12-0, dated 30th January 1913.

*Execution.*—Debtor arrested 1st December 1913 for Rs. 59-14-0. Released the same day on plaintiffs' application.

*Further particulars.*—Debtor sells milk in Ootacamund. Plaintiff sold him milk worth Rs. 30. Debtor could not pay the bill as his cattle, worth Rs. 700, died of rinderpest. After two years plaintiff got debtor to execute a promissory note for Rs. 40. On debtor's arrest, one Karyan, the manager of a chit-fund of which debtor is a member, executed a promissory note to plaintiff for the amount due and got debtor released. Karyan reimbursed himself from debtor's holding in the fund. Debtor has two buffaloes which are however mortgaged, and a small property in Mysore State, also under mortgage. He has a debt of Rs. 200. He once applied to be declared insolvent, but withdrew the petition on the advice of his creditor, who agreed to receive their dues by instalments.

*Commentary.*—Debtor's solvency is doubtful, but I should not blame a court which granted a warrant in such a case, and no harm was done by its issue.

#### CASE No. 98.

*Debtor.*—Maruthai Asari, carpenter, Ootacamund.

*Suit.*—S.C. No. 35 of 1913, Sub-Court, Ootacamund, on a promissory note for Rs. 37-8-0, dated 13th January 1910, interest  $37\frac{1}{2}$  per cent., executed by Kanna Asari and debtor. Decree for Rs. 72-0-6 + Rs. 11-14-0, dated 3rd February 1913, Rs. 30 to be paid within one month and the balance in monthly instalments of Rs. 5.

*Execution.*—Debtor arrested 27th November 1913 for Rs. 87-11-6. Released on 4th December 1913, plaintiff certifying full satisfaction.

*Further particulars.*—Debtor aged 65 is a carpenter earning a rupee a day and has a large family and no property. The money was borrowed by Kanna Asari, a relative. Debtor had on a previous occasion helped Kanna to get a loan from plaintiff by standing surety, and as Kanna alone had then been dunned he consented to lend his name again. After the decree was passed Kanna went to Trichinopoly district. Plaintiff accordingly arrested debtor. On debtor's production before the Sub-Judge he was told that if he could not pay the debt he must go to jail. He offered to pay in small instalments, but plaintiff would not agree. Debtor's son, also a carpenter earning one rupee a day, executed a promissory note in plaintiff's favour for Rs. 40 and paid cash Rs. 15, and got his father released.

*Commentary.*—The debtor was no doubt a fool to stand surety. He would probably not have been accepted as a surety had the creditor not been able to reckon on the power to imprison him. He was imprisoned because he *could not* pay, not because he *could and would not*. The liability then passed to the son, who was in no way responsible for his father's action, and who will probably be sued and imprisoned in his turn. The real debtor escapes altogether.

#### CASE No. 99.

*Debtor.*—Andi, Badaga, cultivation, Kāvilorai, Nilgiris.

*Suit.*—S.C. No. 29 of 1913, Sub-Court, Ootacamund, on a promissory note for Rs. 20, dated 18th February 1910, interest 24 per cent. Decree (*ex parte*) for Rs. 33-9-0 + Rs. 8-10-0, dated 30th January 1913.

*Execution.*—Debtor arrested 3rd September 1913 for Rs. 45-12-3. Released same day, full satisfaction being certified.

*Further particulars.*—Debtor is a Badaga ryot, having about 2 acres of land (part of a joint holding) and a house worth Rs. 50. He bought three bags of seed potatoes at Rs. 7 per bag from plaintiff, under whom he was then working. His potato cultivation realized only Rs. 10, owing to want of rain, and as he could not repay plaintiff he executed the promissory note. On debtor's arrest his brother executed a promissory note in plaintiff's favour for the amount due (Rs. 45-12-3) and got him released. The brother afterwards paid the debt by sale of his potatoes and of cattle. Debtor is to repay his brother at his leisure. There is no formal agreement between them.

*Commentary.*—The original debt more than doubled by the time debtor was arrested, and had to be shouldered by his brother. Debtor had no property beyond what was necessary for his subsistence, and it is doubtful whether arrest warrant should have issued.

**CASE No. 100.**

*Debtor.*—Nazur-ud-din, butcher, Wellington.

*Suit.*—S.C. No. 201 of 1913, Sub-Judge, Ootacamund, on a promissory note for Rs. 60, dated 24th November 1912, interest 24 per cent., three executants. Decree for Rs. 63-9-0 + Rs. 11-6-0, dated 13th March 1913, Rs. 40 to be paid at once and the balance within one month. Rs. 20 paid before execution.

*Execution.*—(i) Debtor arrested 26th July 1913 and released on payment of Rs. 10.

(iii) Debtor arrested for Rs. 59-9-6, dated 19th September 1913. Released 22nd September 1913, plaintiff certifying full satisfaction.

*Further particulars.*—Plaintiffs, S. M. S. Sakara Mammoosa Rowther & Co., Coonoor, lend money to butchers to buy sheep on condition that they repay the loan and supply the skins to the firm. The suit debt represents the balance of a previous decree obtained in respect of an advance of this nature, defendants giving plaintiffs a promissory note for the amount. When the second defendant (debtor) was arrested, they borrowed the necessary sum from the man from whom they buy sheep and paid the decree-holder. Of the sum thus borrowed, Rs. 16 has been repaid and the balance is outstanding. Debtor ascribes their indebtedness to a fall in the price of skins. They have no property and live by the butcher's trade.

*Commentary.*—The court showed some consideration for the debtor's circumstances by ordering postponement of payment of part of the decree amount, but the concession was probably insufficient. The case shows how one decree leads to another. The debtors will probably next be sued by the sheep merchant. They stated in reply to a question that they did not understand the meaning of filing an insolvency petition.

**CASE No. 101.**

*Debtor.*—Bocha Kalan, Badaga, cultivator, near Aruvankadu.

*Suit.*—S.C. No. 312 of 1913, Sub-Judge, Ootacamund, by O. M. Mahomed Mira Rowther of Coonoor on a promissory note for Rs. 75, dated 2nd September 1912, interest 12 per cent. Decree for Rs. 82-3-6 + Rs. 12-6-0, dated 17th April 1913, to be paid within three months.

*Execution.*—(i) Debtor arrested 7th September 1913 and released, plaintiff allowing time.

(ii) Debtor arrested 3rd October 1913 for Rs. 100-14-6. Released 4th October 1913 on plaintiff certifying full satisfaction.

*Further particulars.*—The debtor, a Badaga ryot, contracted to supply plaintiff with potatoes. When debtor believed the contract to be fulfilled, plaintiff alleged that the account showed a debt of Rs. 75, for which he forced debtor to execute a promissory note. When debtor was arrested his brother Mada executed a promissory note to the decree-holder for Rs. 100. Debtor has repaid his brother Rs. 40. He has a house worth Rs. 100, 13 acres of land worth Rs. 25 an acre, and three-fourth acre of *hali* land worth Rs. 300 an acre. The whole property is mortgaged for Rs. 400.

*Commentary.*—The inquiring officer writes: "This is one of the many cases in which the defendant happens to be illiterate and the plaintiff has taken advantage of his ignorance by not keeping proper accounts. The Badaga, whether he is satisfied or not with the correctness of the amount, is compelled to sign promissory notes. In this particular case the Judge advised defendant to furnish bail to file an insolvency petition, but all his people declined to stand surety." The result was that the decree-holder got a fresh bond from a relative.

**CASE No. 102.**

*Debtor.*—Belli, Badaga, cultivator, Chinna Obuthallai, Coonoor.

*Suit.*—S.C. No. 319 of 1913, Sub-Judge, Ootacamund, on a promissory note for Rs. 150, dated 10th July 1911, interest 24 per cent. (paid to 10th March 1913) executed by two signatories to one K. Shanmugam Pillai who assigned it to plaintiff, K. Kadar Moidin Rowther. Decree for Rs. 152-3-3 + Rs. 18, dated 17th July 1913.

*Execution.*—Debtor arrested 4th August 1913 for Rs. 175-0-3 and released the same day, plaintiff certifying full satisfaction.

*Further particulars.*—Debtor signed as surety for one Aru Maistry, who incurred the debt in connexion with a chit fund transaction. Aru Maistry died and debtor was proceeded against. When he was arrested his uncle executed a promissory note for Rs. 175-0-3 to the decree-holder. Debtor's father then sold some land and paid the uncle, who redeemed the note. Debtor, his father and three brothers own a house worth Rs. 100 and some land (value not stated). Debtor, with a partner, also runs a shop. There is a debt of about Rs. 2,000 in connexion with this. The inquiring officer thinks that the suit debt was not *bonâ fide*.

*Commentary.*—Arrest here virtually achieved the same result as attachment of land would have done, though more easily and expeditiously. There can be little doubt that the same effect would have followed if the court had called on the debtor to show cause against imprisonment. He was not likely either to plead indigence or to abscond.

**CASE No. 103.**

*Debtor.*—Madyan, Badaga, cultivator, Bikatti, Coonoor.

*Suit.*—S.C. No. 403 of 1913, Sub-Judge, Ootacamund, on a promissory note for Rs. 25, dated 13th May 1910, interest 75 per cent., executed to one Madya Maistry who endorsed it to plaintiff K. Fakir Mahomed Rowther & Co. Decree for Rs. 75 + Rs. 11-10-0, dated 18th August

1913, Rs. 25 to be paid within a fortnight, Rs. 16 within another fortnight and the balance in Rs. 4 monthly instalments commencing from 15th October 1913.

*Execution.*—Debtor arrested 24th November 1913 for Rs. 90-7-0 and released the same day, plaintiff certifying satisfaction.

*Further particulars.*—The debt was incurred in connexion with a chit fund. Fifty members subscribed eight annas a week. Debtor made fourteen payments and then bought the amount of the chit Rs. 25, for its present value, Rs. 14; *i.e.*, he received Rs. 14 and signed a promissory note for Rs. 25. From this sum should have been deducted the amount of his subscriptions (Rs. 7), but advantage was taken of his ignorance not to do so. The promissory note became the property of a Rowther firm, and eventually he was arrested for Rs. 90-7-0. The decree was satisfied by a cash payment of Rs. 10, and the execution of a promissory note for Rs. 40, by a relative of debtor. Debtor gave the relative a promissory note for Rs. 50, 75 per cent. interest, and has not yet redeemed it. Debtor has a house worth Rs. 100, and works for wages as an agricultural cooly.

*Commentary.*—The Badaga seems to be easily victimized, and, after making allowance for the amount foregone by the creditor, the bargain was still a hard one. A relative had to intervene and himself became a debtor to the Rowther firm.

#### CASE No. 104.

*Debtors.*—Thathan and Madyan, Badagas, cultivation, Jagathala, Coonoor.

*Suit.*—S.C. No. 433 of 1913, Sub-Judge, Ootacamund, on a promissory note for Rs. 50, dated 10th July 1910, 75 per cent. interest, executed to Madya Maistry and by him endorsed to plaintiffs, K. Fakir Mahomed Rowther & Co. Decree for Rs. 100 + Rs. 13-12-0, dated 18th August 1913, Rs. 75 to be paid at once and balance in Rs. 10 monthly instalments. Rs. 20 paid before execution.

*Execution.*—Warrant taken against both debtors. First debtor not found, second arrested 11th February 1914 for Rs. 97-9-0. Released 17th February 1914, plaintiff certifying receipt of promissory note for Rs. 50 in part satisfaction. Plaintiff certified full satisfaction on 20th March 1914.

*Further particulars.*—The debt was incurred in the same way as that described in case No. 103 and the debtors seem to have been similarly defrauded. The second debtor was released by execution of a promissory note by first debtor's brother. The inquiring officer writes: "This is 'also one of the cases in which the ignorance of the Badaga was taken advantage of. The Judge 'advised the debtor to file an insolvency petition and he did not understand what it was.'"

*Commentary.*—Similar to case No. 103.

#### CASE No. 105.

*Debtor.*—Syed Badsha Rowther, trader, Manjidala, Coonoor.

*Suit.*—S.C. No. 15 of 1913 on a promissory note for Rs. 63-10-0, dated 15th November 1912, interest 12 per cent. executed to J. B. Heli, who assigned it to plaintiff, K. S. Kadar Ismail Rowther. Decree for Rs. 65 + Rs. 10-14-0, dated 23rd January 1913.

*Execution.*—Debtor arrested 20th February 1913 for Rs. 80-14-0. Released 7th March 1913, plaintiff certifying satisfaction.

*Further particulars.*—The suit debt represented balance of account with Heli for supply of articles for debtor's shop. Debtor verbally agreed with Heli to pay the debt in Rs. 3 monthly instalments, but soon afterwards Heli assigned the note to plaintiff who sued on it. To secure release debtor executed a promissory note to plaintiff's brother for Rs. 87, interest 37½ per cent. and sold plaintiff his pony for Rs. 16 to go towards the debt. Plaintiff promised to check these payments by a reference to his accounts, but afterwards refused to do so. There was in fact due to plaintiff Rs. 80-14-0 + Rs. 13-7-0 (subsistence allowance and bedding charges) whereas he received Rs. 103, an excess of Rs. 8-11-0. Debtor is entirely without means, and will probably be sued on the last promissory note. He is unwilling to petition in insolvency as it would prevent him from ever again engaging in trade.

*Commentary.*—Shows how the Rowther deals on occasion with one of his own class. The second promissory note was at a very much higher rate of interest than the original one.

#### CASE No. 106.

*Debtor.*—Nanja, Badaga, cultivation, Merkanad.

*Suit.*—S.C. No. 309 of 1913, Sub-Judge, Ootacamund, by a Marwari on a promissory note for Rs. 17, dated 23rd March 1911, interest 75 per cent. Decree for Rs. 42-5-0 + Rs. 5-14-0, dated 1st May 1913.

*Execution.*—(i) Three successive arrest warrants: debtor not found in case of the first two, and plaintiff took no steps in case of third.

(ii) Debtor arrested 6th October 1914 for Rs. 54-7-0. Released 9th October 1914, the amount of decree being paid into jail.

*Further particulars.*—The debt was incurred in ragi, obtained for food. When imprisoned debtor paid Rs. 16 which he had in cash, and borrowed Rs. 40 from one Jogi maistry at 12 per cent. interest, which he has not yet repaid. He has a coffee garden of four acres, yielding 15 to 20 bushels coffee at Rs. 8 per bushel, and works as a cooly.

*Commentary.*—Release secured by incurring a further debt, at however a moderate rate of interest compared with the Marwari's 75 per cent. The debtor was arrested for more than three times the amount of the original loan.

## CASE No. 107.

*Debtor.*—Benjamin Betta, Badaga, cultivator, Halada, Kaity.

*Suit.*—S.C. No. 48 of 1913 by a Marwari for Rs. 35, secured on pledge of jewels 19th December 1909, interest 25 per cent. Decree for Rs. 62 + Rs. 11-14-0, dated 20th February 1913.

*Execution.*—(i) Attachment of jewels, which were sold for Rs. 37-12-0.

(ii) Arrest warrant : debtor not found.

(iii) Debtor arrested 19th December 1913 for Rs. 48-8-0. Released 27th December 1913 amount of decree being paid into jail.

*Further particulars.*—Debtor borrowed the money to keep himself going while doing road contract work under the Local Fund. He has no property and a debt of Rs. 100. He paid the debt by borrowing Rs. 50 from a relative, his son executing a promissory note for it. The son has paid Rs. 25 of this debt and still owes the remainder. The debtor is not acquainted with the nature of insolvency proceedings, being an illiterate Badaga.

*Commentary.*—Imprisonment was unjustifiable and it led to the son, who supports himself on a monthly pay of Rs. 10, becoming involved.

## CASE No. 108.

*Debtor.*—Masia Kalan, Kasaba, agricultural cooly, Ootacamund.

*Suit.*—S.C. No. 617 of 1914, Sub-Court, Ootacamund, for a debt of Rs. 125, being Rs. 100 cash and five bags ragi at Rs. 5 per bag, interest 24 per cent., oral agreement. Defendant appeared on 31st August 1914 and denied debt. Case adjourned to 15th September 1914. Defendant absent and *ex parte* decree for Rs. 226-8-0 passed.

*Execution.*—Debtor arrested 17th October 1914 for Rs. 224-15-0. Still in jail on 13th November 1914 when I inquired into his case. Civil warrant has since been suspended as debtor has been convicted under Forest and Arms Acts.

*Further particulars.*—The debtor, while in jail, told me the following story:—He had worked under the plaintiff Basuviah, a local landholder, up to three years previously, receiving one *kolagam* of ragi on the days he worked. This did not satisfy him and he left plaintiff's service for that of Fakir Muhammad Sait. Some time later, four other coolies left plaintiff for the same estate. Plaintiff suspecting that debtor was responsible for this, then sued him as above. Debtor contended that the claim was false, and was prepared to contest it on the day fixed for hearing. He came to the court and met plaintiff outside, who told him that the case was adjourned to the following day. When he appeared on the following day he heard that an *ex parte* decree had been passed the day before. He spoke to the Sub-Judge, who told him to put in a petition. On inquiry he found that to do this he must engage a lawyer for Rs. 10, so he let the matter drop.

Plaintiff's story is that soon after he had engaged the debtor one Kalappan, of the Mysore State, appeared and claiming to be his former master alleged that debtor owed him Rs. 100, viz., Rs. 50 in cash and Rs. 50 in ragi. Plaintiff paid Kalappan Rs. 50, and promised to pay the balance, on condition that debtor remained with him. The balance has not yet been paid. This story plaintiff, although he is a big landlord, has no documentary evidence to support. He produces no accounts, and took no written acknowledgment either from Kalappan or from debtor. Debtor denies the whole story.

*Commentary.*—I have set out the above facts, as they appear to me to show the dangers of indiscriminate imprisonment when we are dealing with the illiterate classes. It seems improbable that plaintiff should have acted as he alleges, and have been able to produce no documentary proof of his action. I do not regard the claim as substantiated, while debtor's story of how he was prevented from appearing to contest it adds to the suspicion. The decree and the order to imprison were based solely upon plaintiff's *ipse dixit*. Apart from all this, plaintiff must have known that debtor was only a cooly living on a daily wage, and his resolve to imprison must have sprung either from motives of vengeance or a desire to get debtor back to his service. Compare with this some of the Tanjore cases.

## APPENDIX II.

## OPINIONS OF JUDICIAL OFFICERS

## I

*Memorandum on Imprisonment for Debt.*

A creditor who has obtained a decree may take out execution against either the person or the property of the judgment-debtor, discretion being reserved to the court to refuse execution against both person and property simultaneously. Assuming that application is made for the issue of a warrant of arrest, the Court may have recourse to the provisions embodied in order XXI, rules 37 and 40, Civil Procedure Code; that is to say, it may, in lieu of issuing a warrant, issue a notice calling on the debtor to appear and show cause why he should not be committed to jail. (This provision is not to be confused with that contained in order XXI, rule 22.) If the debtor appears and an inquiry shows that he is in indigent circumstances and has not disposed of his property in a fraudulent manner, the court may disallow the application for arrest. These provisions were introduced by the Debtors Act, 1888, and were designed to enable courts to exercise their power to order arrest in a discriminating manner. As far however as my inquiries have gone, they are, from this point of view, a dead letter. Courts do occasionally direct the issue of notice in cases where the debtor is a public servant, or has some social standing. But the purpose in these cases is either to save the debtor's employer from inconvenience or the debtor himself the indignity of a sudden arrest. If he cannot pay the decree amount, either in a lump sum or, if the court and (except in the Small Cause Court) the creditor so permit, in instalments, he must go to jail. This is clearly no compliance with the intention of the rule, and it would be of interest to know whether it is anywhere used to inquire into the circumstances and conduct of the debtor, and whether the courts ever exercise the discretion they possess under it not to send a really indigent debtor to jail. And what are the reasons why this procedure is not more generally made use of? If it is deemed inexpedient to serve a debtor with a notice to appear, lest he should abscond, might not some inquiry into his circumstances be made on his arrest and production, as is provided for by order XXI, rule 40?

2. The adoption of a practice of this kind would have the result that no one should be imprisoned, as persons are imprisoned at present, merely because they are judgment-debtors, but imprisonment would be restricted to cases of contumacy and fraud. The Indian procedure would be assimilated to that followed in England and other countries. I will indicate briefly what I think would be some of the consequences of such a change. In the first place, the restriction placed upon imprisonment would deprive creditors of a very efficacious means of realizing their debts. This in turn would affect the operations of money-lenders. The money-lender, it is generally agreed, is a necessity in this country. It is conceivable, however, that his activities are in need of more regulation than they receive at present. Money can be borrowed with a fatal ease, and largely irrespective of the prospect of repayment. One may perhaps divide the loan transactions between money-lenders and their clients into two fairly distinct classes—(a) loans made to men of some substance on ascertained security, and (b) loans made to men of little or no substance in a speculative manner. The first class of loans represents a sound system of credit, and I fancy that a high proportion of such cases never come into court, or, if they do, the decree is satisfied without resort to imprisonment. The restriction of imprisonment to cases of fraud or contumacy would not therefore prejudice good credit to a material extent. It is the second variety of loans that gives all the trouble. A vast amount of this speculative business is done by money-lenders, especially by the less reputable among them; and it is arguable that their ability to carry on this sort of transactions is directly traceable to the power of indiscriminate arrest and imprisonment which the law places in their hands. It is true that in many cases the debtor is not actually imprisoned, the mere threat being sufficient to secure satisfaction, but the effect is the same. And apart from the encouragement which the law gives to reckless borrowing and lending, there is ground to believe that proceedings against the person have the following evil effects: (a) that persons not legally or even morally liable for the debt, as friends or relations of the debtor, are constrained to pay the debt in order to save him from jail, and (b)

that the debtor is often compelled to borrow anew, frequently on more usurious terms, in order to pay the debt, with the result that although one decree may be satisfied, it is at the cost of laying the foundations of another. Executions against property would not produce these results in the same degree. Briefly, I suggest that to place some restriction on imprisonment, while not seriously affecting sound loan transactions, would suppress a good deal of borrowing by persons not in a position to do so, and would make both the money-lender and the client more careful. I shall be glad to receive an opinion how far such a measure would affect the credit of (a) the petty merchant or artificer and (b) the agriculturist.

3. The effect of such a measure on the work of the courts is not very easy to predict. One is apt to draw the hasty conclusion that there would be the same amount and kind of litigation as at present, while a great deal more difficulty would be introduced into the execution of decrees. But if, as seems probable, a good deal of borrowing (and that the worse part of it) were stopped, there would be much less litigation than at present. Further, the courts would be a less effectual instrument in the money-lender's hand, and accordingly he would have less resort to them. On the whole it appears likely that the burden on the courts would diminish rather than increase.

4. It may be contended that the restriction of imprisonment will be injurious to credit by raising the general level of interest demanded. But in the first place it is found that the rate of interest charged often bears little relation to the quality of the security, and is regulated rather by custom. Secondly, the money-lender will defeat his own interests if he attempts to enhance the prevailing usurious rates. There is a proposal now under consideration to pass a Money-lenders Act, enabling the court to interfere with the rate of interest charged, which, if brought into force, will materially affect this subject. It will be useless to charge a rate of interest higher than the courts will award.

5. The bearing of the law of insolvency on imprisonment for debt deserves attention. There is at present a general complaint that recourse to insolvency procedure is only had by fraudulent debtors pursued by their creditors, and that such persons are able to obtain the protection of the Insolvency Act without submitting themselves to an inquiry into their conduct, it having been held that the court has no power, under the terms of sections 14 and 15 of Act III of 1907, to reject the petition on the ground of fraudulent conduct. The amendment of the Act in this respect is now under consideration, and it is generally agreed that the behaviour of an applicant should be scrutinized before he is adjudicated an insolvent. If this be done, and if a similar scrutiny be held before a warrant of arrest is granted under a decree, the law will discriminate adequately between the pauper and the cheat. At present a swindling debtor, who has some funds at his disposal, may escape imprisonment by being adjudicated an insolvent, while an indigent debtor, who probably cannot afford even to petition in insolvency, is sent to jail. The alternative proposed is that the swindler should be committed to jail and denied the asylum of insolvency, while the pauper is saved from prison and allowed to become an insolvent if he so desires. The extent to which the fees at present charged in insolvency proceedings act as a deterrent, as well as other reasons for the sparing use made of the insolvency law, is here worthy of consideration.

6. Two further points have some connexion with this subject—

(a) Under order XX, rule 11 (2), Civil Procedure Code, the court, after the passing of the decree, may only order that payment of the amount decreed shall be postponed, or made by instalments, if the decree-holder consents to the course proposed. The law applicable to the Small Cause Court, Madras, enables such an order to be made independently of the consent of the decree-holder. Are there any objections to amending the rule under the Civil Procedure Code into conformity with this?

(b) The period of limitation prescribed by section 48, Civil Procedure Code, for the execution of decrees—twelve years—should, it is suggested, be reduced to, say, three years in the case of money decrees of less than a certain amount.

A. J. CURGENVEN.

5th December 1914.

## II

*Letter*—from J. T. GILLESPIE, Esq., I.C.S., District Judge, Salem.

*Dated*—the 5th January 1915.

So far as my own experience, and the experience of the two District Munsifs whom I have consulted, goes the provisions for the protection of the honest, but indigent, debtor (which were first introduced by the Debtors Act in 1888 and are now embodied in order XXI, rules 37 and 40 of the Code of Civil Procedure) are a dead letter as stated in the memorandum. The reason is that the courts have no materials before them at the earliest stage of proceedings in execution from which to draw a distinction between honest and fraudulent debtors, and it is quite out of the question for them to issue the notice referred to in order XXI, rule 37, in all cases. That would be an impossible task in the majority of courts owing to the vast number of execution petitions received in which the arrest of the judgment-debtor is asked for. Besides, such a procedure would be a great encouragement to fraud, as the fraudulent debtor would be certain to take advantage of it by absconding, and so evading the further process of the court. As for making enquiry into the debtors' circumstances after he has been arrested and produced before the court, that too is impracticable as a rule. Most civil courts nowadays are so burdened with

work that they cannot spare the time to initiate such enquiries *suo motu*, and debtors themselves seldom, if ever, move for them. Nevertheless, if in any case it is brought to the notice of the court by any means that it would be harsh and unjust to imprison a debtor, the provision of law is there, and can be made use of. If, in addition, the courts are given a discretion to disallow excessive rates of interest to money-lenders it seems to me that nothing further need be done at present in the direction indicated in the memorandum. The money-lender is not always a greedy and heartless Shylóck. On the contrary he is frequently a useful member of the community without whose assistance the small tradesman, and artisan and agriculturist would find it impossible to get along at times. It is difficult to foresee how far the credit of these latter classes would be affected by placing further restrictions on imprisonment in execution of civil court decrees, but it seems to me to be quite possible that it might be so reduced as to cause a graver injury to the classes concerned than that from which it is intended to relieve them.

As regards paragraph 3 of the memorandum I have little doubt that the introduction of the measure referred to would cause a net increase of the work of the courts, and that is a strong reason for deprecating its introduction until it is made pretty clear that the net result in other ways would be a beneficial one.

*Paragraph 5 of the memorandum.*—I doubt very much whether debtors are deterred from applying for the benefit of the Insolvency Act to any great extent by reason of the fees payable in proceedings thereunder, but it will be interesting to see the effect of the operation of the Act of the amendment referred to here. It seems not unlikely that the result of the change will be to make the act more than ever a dead letter, for there can be little doubt that as matters now stand it is only fraudulent debtors who have recourse to it for the most part.

*Paragraph 6 of the memorandum.*—I see no objection to the amendment of the Civil Procedure Code as suggested in paragraph 6 (a). The change would be certain to have good results.

As for the suggestion that the period of limitation prescribed by section 48, Civil Procedure Code, for the execution of decrees should be reduced to, say, three years in the case of money decrees for less than a certain amount, both the District Munsifs whom I have consulted are opposed to it and they are both officers of considerable experience, but I am not sure that it would not be well to try the experiment. The period of limitation might be reduced to say six years, as a tentative measure. To reduce it to three years all at once would be rather drastic.

### III

Letter—from M.R.Ry. K. S. KOTHANDARAMA AYYAR Avargal, B.A., B.L., District Munsif, Salem.

Dated—the 24th December 1914.

The provisions referred to in paragraph 1 of the memorandum (for imprisonment for debt) of the Debtors Act, 1888, do not seem to be availed of at all. In my experience as a pleader for six years and as District Munsif of about seventeen years, I did not come across a single instance in which the aid of these provisions was invoked by a judgment-debtor or his pleader. As for the court itself issuing a notice in the first instance instead of an arrest-warrant, it is a well-nigh impossible task. There are, for instance, about 5,500 execution petitions in a year filed in this court alone; and it may be stated that sixty to seventy-five *per cent.* of them are for arrest of the judgment-debtors. There would, at the time of application, be no material before the court to ascertain in which of those thousands of cases a preliminary notice is desirable on account of the judgment-debtor's indigency; for at that stage, there would be before the court only the decree-holder's application, in which certainly he would not mention the judgment-debtor's pauperism (even if true) with the effect of stultifying his own application.

2. As for issuing notices in *all* cases, such a course would *firstly* operate simply as an invitation to the judgment-debtor to try a chance of the plea of indigency after his other pleas in the suit have been tried and failed and a decree has been passed, and before he adopts the tactics of evading or befriending the process-server that brings the arrest-warrant; *secondly* it would involve an enormous quantity of clerical labour and work to the process-establishment and would require a large increase in the staff of clerks and process-servers; and *thirdly* the work of the court itself will largely increase; for it may be easily believed that a good percentage of the judgment-debtors that are served with notices would try, or would be advised to try, this chance of escaping arrest, with the result that a regular enquiry would have to be held and witnesses will have to be examined on both sides and documents exhibited and considered. It appears to me that the work of courts would much increase, rather than diminish as stated in paragraph 3 of the memorandum. Two reasons are suggested as probably tending to diminish the court's work, both of which appear to me untenable. *Firstly*, litigation will not become less at all, nor is it likely that a good deal of borrowing will be stopped. Nor is it probable that the money-lender having parted with hard cash in the hope of getting it back with increase and having gone through the trouble and further expense of litigation would cease from seeking the judgment-debtor's arrest as the easiest and speediest mode of getting back his money.

3. As to why the judgment-debtors *suo motu* do not come forward and avail themselves of the provisions of the Debtors Act, 1888, and make application, that is a different matter. The present

point is that the court of its own motion and in the first instance, cannot issue a notice like the one suggested, instead of an arrest. In fact the tenor of the remarks marginally quoted from

"This is clearly no compliance with the intention of the rule and it would be of interest to know whether it is anywhere *used* [invoked by parties would be rather the right thing to say] to enquire, etc. What are the reasons why this procedure is not generally *made use of*?"

paragraph 1 of the memorandum seems to indicate some misapprehension as to the duties and functions of civil courts. If a judgment-debtor really indigent does not for any reason of his own invoke the aid of the Debtors Act, 1888, to avoid arrest, it is not for the court to suggest to

him that he may do so and that he may court a trial on that point.

4. Already it appears to me that the judgment-debtor has enough of devices to avoid or put off payments of just debts. If the money-lender be a "necessity in this country," and money can, by borrowers, "be borrowed with a fatal case," it does not seem just or reasonable to try to throw more obstacles in the way of the money-lender getting back his money. If the borrower will borrow "largely irrespective of repayment" his course would not be further facilitated by withdrawing in many cases (each judgment-debtor would naturally hope his case to prove successful) the *fear* of his being arrested under civil warrant. Such legislation would seem to proceed on the assumption that the lender is the sinner, not the borrower. Already the judgment-debtor has many ways of escape, not the least of them being the Insolvency Act. Immediately on being brought under arrest, he has to be told that if he chooses he might apply to be declared an insolvent and on his stating his intention to do so the court is *bound* to release him with only a safeguard for his reappearance if required. As soon as his creditors are served with notices of his application, as the law stands, he *must* be adjudged insolvent.

5. The proposal to give the courts power to order payment by instalments or give time for payment *without* reference to the creditor's wish in the matter will add a very useful and salutary provision to the statute book.

The proposal to reduce to less than twelve years the time during which decrees may be executed will work a great and unnecessary hardship on persons who have lent money and obtained decrees.

#### IV

*Letter*—from M.R.Ry. P. G. RAMA AYYAR Avargal, B.A., B.L., Additional District Munsif, Salem.

*Dated*—the 18th December 1914.

With reference to District Court Endorsement No. 6257, dated the 11th instant, communicating to me the Memorandum of Mr. A. J. Curgenvven, I have the honour to state as follows:—

(1) In paragraph 1 of the Memorandum the officer on special duty says that courts very seldom make an enquiry into the circumstances and conduct of debtors and exercise the discretion they have of refusing to commit indigent debtors to jail. It is true that such enquiries are few and far between. But this is not due to any disinclination on the part of the courts to conduct such enquiries. It is very seldom that debtors avail themselves of the remedy which already exists. It seems to me that the provisions of the present Code of Civil Procedure authorising such enquiries afford ample protection for really indigent debtors. I do not think it expedient to issue a notice before arrest, nor do I think it necessary that courts should be directed in every case in which a person is brought under arrest to make an enquiry as suggested in the memorandum. If any debtor is really indigent and deserves protection it is open to him to apply for relief under the law as it stands now. If he himself does not seek protection, it is no business of the court to ask him to do so. To invite debtors to avail themselves of the protection is to encourage dishonesty. There are already many ways of evading payment of just debts. If further ways are sanctioned the result would be an unnecessary increase of work for the courts, an unjustifiable interference with the sacredness of obligation and an uncalled for encouragement to dishonest debtors.

(2) Paragraph 2 of the memorandum is devoted to pointing out the evils of indiscriminate commitment to jail and the advantages of placing restrictions on the power of imprisonment. The officer on special duty seems to think that restriction on imprisonment for debt would make the money-lender and the client more careful. I am not quite sure that the result mentioned is likely to follow to any material extent. In this country petty traders, artificers and agriculturists have to borrow money very often. They have no co-operative banks or other institutions to help them. They are of necessity driven to seek help from the money-lending class. The latter would continue to lend as usual and take their chance of successfully getting over the restrictions which the Legislature may impose. Assuming that restrictions on imprisonment are likely to curtail money-lending transactions, the result will be that petty traders, artificers and small agriculturists will have to stop their business and cultivation for want of funds. What further results are likely to follow is a large question involving an enquiry into the social, political and economical conditions of the people of India.

(3) I agree with the suggestion that power may be given to the courts to order payments of decree debts by instalments and to give time to the debtors independently of the creditors' consent. Such a provision will prove beneficial to debtors who are petty traders or other persons earning weekly or monthly wages while it will not prejudice the creditors materially.

(4) I am opposed to the reduction of the present twelve years' limitation. Instances are not wanting in which decree-holders have not been able to realise their dues even within twelve years. To evade arrest and attachment for a short period of three years is not a very difficult task for dishonest debtors. Any reduction of the present period of twelve years is sure to work great injustice.

## V

*Letter*—from H. R. BARDSWELL, Esq., I.C.S., District Judge, Kurnool.  
*Dated*—the 7th January 1915.

I send you the following remarks with reference to your Memorandum on Imprisonment for debt, dated 5th December 1914, which came with your demi-official of 8th December 1914. There is no Sub-Judge, and only one experienced District Munsif in this district, and the notes of this District Munsif on the subject of your memorandum I enclose with his letter. I base my own reply on my own experience and on a consideration of what is said by the District Munsif, Kurnool, and of the suggestions made to me by leading pleaders of my court whom I have consulted.

2. *Memorandum (paragraph 1)*.—I have always hitherto, when an application is made for the issue of a warrant of arrest against a judgment-debtor, followed the procedure allowed by order XXI, rule 37, and issued a notice to show cause in the first instance. But I should say that I have had very few applications for such warrants, and those that I have had may be said to have been subsidiary in their nature, as there has been no question of either the judgment-debtor's ability or willingness to pay. The question has only been one of the amount due from him. But I should always be disposed to issue notice to show cause before issuing a warrant unless there is a real fear of the judgment-debtor absconding. The District Munsif seems rather to have missed the point when he says that the judgment-debtor rarely invokes the power to make some enquiry. The question is, why do the courts not use that power even of their own volition?

3. I would support the recommendation of the District Munsif, Kurnool, that courts may be given the discretionary power, of committing judgment-debtors to the custody of a process-server and even sending them to their villages or other villages in such custody, in order to give them the chance of collecting what is due from them, not only in cases to which order XXI, rule 40 (2), applies, but also in other cases.

4. I do not believe that as a rule a really indigent debtor will be sent to jail, though there is always the possibility of such a thing being done out of spite, and I can imagine such a thing being done in some of the southern districts, of which, however, my experience is of the slightest.

5. I think that it would be a good thing always formally to examine a judgment-debtor, whether he appears under rule 37 or under rule 40, as to whether he intends to apply to be declared an insolvent or has any other cause to show against being committed to jail.

6. *Memorandum (paragraph 2)*.—I can only deal with this branch of the subject theoretically. I have had little or no experience so far of speculative loans, but I am disposed to agree with the District Munsif when he says that these loans are frequently given to expectant heirs out of whose property, when it comes to them, it is hoped to make good the loan together with the interest. I have, indeed, one or two suits pending before me now which, I believe, refer to transactions of that kind. I very much doubt, however, whether loans of a speculative kind, even if made to people who neither have, nor are likely to have, property out of which the loan amount can be recovered, are made at all under the influence of the idea that, if the money cannot be got back, at any rate the debtor can be sent to jail. In the case at any rate of the petty agriculturist, I believe that what commonly happens is that the debtor, being unable to pay back his debt and having no likelihood of ever doing so, becomes to all intents and purposes a serf of the money-lender, which is what the sowcar will naturally prefer to keeping him sitting in a civil jail at his charges. I have heard of such cases in the Circars and do not believe them to be uncommon elsewhere. I am of opinion, therefore, that any alteration in the law of imprisonment for debt is not likely to make any difference to the making of speculative advances to petty agriculturists. Such alteration might, however, make a difference in the case of petty traders whose utility as serfs would be far less than that of a cultivator. I do not support the District Munsif's suggestion that the burden of proof with regard to the question of consideration might be thrown on the creditor, always supposing that there is a proper document properly proved evidencing the transaction.

7. *Memorandum (paragraph 3)*.—So far as this district is concerned I do not think that an alteration of the law as to imprisonment for debt is likely to make any considerable difference either way to the work of the court. The Insolvency work, that is being done here now, is very trifling in extent.

8. *Memorandum (paragraph 4)*.—I agree with the District Munsif that any changes such as are suggested are not likely to cause the rates of interest to be enhanced as against those now charged. I should welcome a law that allowed a court the power to interfere so as to lower the rate of interest charged in *all* cases, instead of only in cases where the interest is penal in its character.

9. *Memorandum (paragraph 5)*.—That a man should, as at present, become entitled to be declared an insolvent by the mere fact of filing his petition, certainly makes insolvency too easy. As it is, it is customary for the debtor to appear and be examined before adjudication under section 14 (2), Provincial Insolvency Act, but such examination, as things are, is a mere empty form. A more searching examination, on which it would depend whether or no adjudication was to be allowed, would no doubt take up considerably more time than is required in present circumstances, but it is necessary in order to prevent the evasion by swindlers of their liabilities through having resort to the bankruptcy law.

10. I do not believe that the fees charged in Insolvency Proceedings act as any deterrent from the use of the insolvency law. This, I understand, is the general impression of the pleaders of my court.

11. *Memorandum (paragraph 6).*—I am in favour of the procedure in force in the Small Cause Court being made applicable to other courts also, but I agree with the District Munsif that any order for payment in instalments made without the consent of the decree-holder should be subject to appeal.

12. The period of limitation might be cut down to a period of three years in the case of money decrees not exceeding Rs. 50. The suggestion of the District Munsif as to the preservation of records till the expiry of the limitation period also appears to me a good one.

13. I do not discuss the other suggestions made by the District Munsif, as they can hardly be regarded as an expression of views on the "points raised" by you, which is all that you have asked for, and so do not arise out of your reference.

## VI

*Letter*—from M.R.Ry. C. V. KRISHNASWAMI AYYAR Avargal, District Munsif, Kurnool.

*Dated*—the 23rd December 1914.

With reference to the Proceedings of the District Court No. 180, dated 12th December 1914, calling for my views on the points raised in the Memorandum of the Special Officer, Mr. Curgenven, sent therewith, I have the honour to submit the following :—

(1) The chief points raised in the memorandum are stated in the left halves of these pages, and my opinions are stated opposite to them on the right halves :—

1. Whether the power vested in Civil Courts under order XXI, rule 40, Civil Procedure Code, is anywhere used to inquire into circumstances and conduct of the debtor, and whether the courts ever exercise the discretion they possess under it not to send a really indigent debtor to jail. (Memorandum, paragraph 1.)

The power is very occasionally used and the discretion is exercised very occasionally.

2. What are the reasons why this procedure is not more generally made use of. (Memorandum, paragraph 1.)

The exercise of this power is rarely invoked by the judgment-debtor for the following reasons :—

(1) If the person arrested or the person on whom a notice is served under order XXI, rule 37, has property and is only temporarily unable to pay the decree amount, he generally takes a week or 10 days time to collect money and pay up, and during that time he is kept in the custody of two process-servers in the court buildings. In most cases he is able to find the money at the end of that period and pays up the decree. If more time is wanted he and the creditor in most cases agree to his executing a mortgage deed, or to somebody else standing surety for him, and the judgment-debtor is released. In this connection I may suggest that express power may be given to courts to keep judgment-debtors arrested in the custody of process-servers to enable them to get money to pay up. Order XXI, rule 40, expressly gives power to courts to keep them in the custody of an officer of the court only in cases where an enquiry is being held under that rule. Other judgment-debtors are kept in custody by orders made under section 151, Civil Procedure Code. A District Judge of Tanjore sent round a circular prohibiting it. That was when the old Code was in force. After he left the district, and after the new section 151, Civil Procedure Code, the old practice was resumed. It is desirable to have a definite rule on the point, especially

as objection may be taken to the validity of the custody in case the judgment-debtor escapes and is prosecuted for escape from lawful custody. Now the courts go only so far as to keep him in the court buildings. But that is sometimes found not enough. It will be more convenient to the judgment-debtor if the courts can allow him to go to his village in the custody of the process-servers to gather money and pay up. This giving of time will be of more benefit to both the judgment-debtor and the creditor than any elaborate enquiry into the financial condition of the judgment-debtor in which conflicting evidence will be given.

- (2) If the debtor is really *indigent*, i.e., if he has no property at all, it is extremely rare for a creditor to throw good money after bad by paying the batta to feed the judgment-debtor in the jail. So the creditor usually does not pay jail batta and the judgment-debtor is released.
- (3) Moreover, in such cases, and in cases where the judgment-debtor has some little property but not enough to pay his debts in full, he takes the advantage of the Insolvency Act as soon as he is arrested and puts in a petition for adjudication. After the new Act III of 1907 came into force this is a very common way of getting released, and in case the creditor is obdurate and will not come to terms, is often resorted to. The ordinary judgment-debtor has no fear of the stigma of being declared an insolvent. It is only very occasionally one finds a person who is not willing to take advantage of this method even if he is really unable to pay his debts. The following tables give some figures which show what a small proportion of debtors against whom arrest warrants are asked for are sent to jail ultimately, and that even those few are not kept there long :—

TABLE I.

| Year.    | Number of petitions in which orders for arrest were passed. | Number of petitions in which warrants were not issued for repayment of process fee. | Number of warrants issued. | Number of warrants returned unexecuted |                                    |                                      |                           | Number of judgment-debtors arrested. | Number of judgment-debtors released on payment of decree debt in whole or in part. | Number of judgment-debtors released after arrest. |                               |                                         |                                             |                    |
|----------|-------------------------------------------------------------|-------------------------------------------------------------------------------------|----------------------------|----------------------------------------|------------------------------------|--------------------------------------|---------------------------|--------------------------------------|------------------------------------------------------------------------------------|---------------------------------------------------|-------------------------------|-----------------------------------------|---------------------------------------------|--------------------|
|          |                                                             |                                                                                     |                            | At plaintiff's request.                | On payment of money before arrest. | Owing to illness of judgment-debtor. | Judgment-debtor not found |                                      |                                                                                    | At plaintiff's request.                           | On non-payment of jail batta. | On judgment-debtor furnishing security. | On receipt of stay order of District Court. | Number imprisoned. |
| 1913 ... | 681                                                         | 189                                                                                 | 492                        | 102                                    | 92                                 | 2                                    | 239                       | 54                                   | 11                                                                                 | 25                                                | 7                             | 3                                       | ...                                         | 8                  |
| 1914 ... | 637                                                         | 165                                                                                 | 472                        | 86                                     | 88                                 | 2                                    | 235<br>2 escaped.         | 59                                   | 5                                                                                  | 35                                                | 5                             | 5                                       | 2                                           | 7                  |

TABLE II.

| Number of suit.   | Profession of the judgment-debtor. | Amount decreed. |    |    | Term fixed for imprisonment. | Aggregate days in jail. | Why released.                                | Whether any petition put in by judgment-debtor for his release. |
|-------------------|------------------------------------|-----------------|----|----|------------------------------|-------------------------|----------------------------------------------|-----------------------------------------------------------------|
|                   |                                    | RS.             | A. | P. |                              | Y. M. D.                |                                              | No.                                                             |
| O.S. 357/13 ...   | Trader ...                         | 287             | 2  | 5  | Six months.                  | 0 0 3                   | On report of full satisfaction by the court. | No.                                                             |
| S.C.S. 599/08 ... | Cultivator ...                     | 102             | 0  | 0  | Do.                          | 0 1 10                  | On report of part satisfaction by the court. | "                                                               |
| O.S. 766/11 ...   | Do. ...                            | 12              | 15 | 0  | Six weeks.                   | 0 0 6                   | On report of full satisfaction by the court. | "                                                               |
| 704/12 ...        | Do. ...                            | 75              | 12 | 0  | Six months.                  | 0 3 27                  | Non-payment of subsistence batta.            | "                                                               |
| " 774/10 ...      | Do. ...                            | 115             | 12 | 0  | Do.                          | 0 1 5                   | do. do.                                      | "                                                               |
| " 142/12 ...      | Do. ...                            | 400             | 0  | 0  | Do.                          | 0 4 21                  | do. do.                                      | "                                                               |
| " 1070/12 ...     | Employment.                        | 81              | 1  | 6  | Do.                          | 0 0 6                   | do. do.                                      | "                                                               |
| " 295/13 ...      | Trader ...                         | 219             | 8  | 0  | Do.                          | 0 1 27                  | do. do.                                      | Yes.                                                            |
| Gooty 126/05 ...  | ...                                | 90              | 0  | 0  | Do.                          | 0 0 28                  | do. do.                                      | No.                                                             |
| O.S. 401/13 ...   | Cultivator ...                     | 95              | 12 | 0  | Do.                          | 0 1 11                  | do. do.                                      | "                                                               |
| S.C.S. 179/13 ... | Trader ...                         | 35              | 14 | 3  | Six weeks.                   | 0 0 17                  | do. do.                                      | "                                                               |
| " 322/13 ...      | Cooly ...                          | 13              | 12 | 0  | Do.                          | 0 0 19                  | do. do.                                      | "                                                               |
| " 408/13 ...      | Sowcar's clerk                     | 37              | 0  | 9  | Do.                          | 0 1 9                   | do. do.                                      | "                                                               |
| " 61/14 ...       | Cooly ...                          | 22              | 6  | 0  | Do.                          | 0 1 12                  | Completion of the term of imprisonment.      | "                                                               |
| " 18/12 ...       | Cultivator ...                     | 39              | 4  | 11 | Do.                          | 0 0 21                  | Non-payment of subsistence batta.            | "                                                               |

None of the persons actually sent to jail except one put in a petition asking for release on the ground of being too poor to pay up their debts. I think they would have done so if they were really indigent. In the one case in which an application was made the petitioner stated that he was going to apply for being declared an insolvent. He was ordered to furnish security for his appearance under section 55 (4), Civil Procedure Code. He did not produce such security, and so he was sent to jail. The spirit of Mr. Pickwick who would go to jail though able to pay the debt merely because the judgment-creditor's demand was wrong, is not also altogether extinct. There is also a wrong notion prevalent that if a man is detained in Civil jail for the prescribed period his decree debt becomes thereby satisfied and some judgment-debtors who just before the arrest transfer their properties to some relative, go to jail and do not court an enquiry into their financial condition. (Contra Section 58 (2), Civil Procedure Code.)

3. If it be deemed inexpedient to serve a debtor with a notice to appear, lest he should abscond, might not some enquiry into his circumstances be made on his arrest and production, as is provided by order XXI, rule 40. (Memorandum, paragraph 1.)

There can be little objection to this enquiry being held. The power to make such enquiries has been already given under order XXI, rule 40. What the Special Officer evidently wants is that such enquiries should be compulsory in all cases where a creditor insists on sending a judgment-debtor to jail. I think this is unnecessary. The court is bound to make such an enquiry if the judgment-debtor wants it. Under section 55 (3), Civil Procedure Code, a court is bound to inform every person arrested "that he may apply to be declared an insolvent and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he complies with the law of insolvency for the time being." If after this he does not care to take advantage of Insolvency Act and if he himself does not invite an enquiry under order XXI, rule 40, I do not see why the court should spend its time in enquiring whether he is able to pay the debt or not. I may, however, add here that sometimes this information is not given to the judgment-debtor by oversight. I would suggest that a rule may be

- made to the effect that before any order is made committing a judgment-debtor to jail a record should be made that this information was given to the judgment-debtor and of what he has to say on the matter. A provision may also be added to section 55 (3), making it incumbent on a court to inform the judgment-debtor that he can apply under order XXI, rule 40, Civil Procedure Code, for an enquiry contemplated by the rule. If even after this he does not apply, I do not think the court should be compelled to make an enquiry.
4. The extent to which fees at present charged in Insolvency Proceedings act as a deterrent as well as other reasons for the sparing use made of the Insolvency law. (Memorandum, paragraph 5).
5. (a) Whether restricting imprisonment to cases of "contumacy and fraud" would affect the credit of—  
 (1) the petty merchant,  
 (2) the agriculturist.  
 (Memorandum, paragraph 2.)
5. (b) Whether the ability of money-lenders to carry on speculative transactions is directly traceable to the power of indiscriminate arrest and imprisonment which the law places in their hands. (Memorandum, paragraph 2.)
- This point is referred to in paragraph 5 of the Special Officer's memorandum, viz., whether the fees charged in Insolvency Proceedings act as a deterrent. I think they do not. The usual fee for preliminary notices, etc., is about 10 to 15 rupees and nearly all persons are able to produce that amount. The other expenses are not incurred if the insolvent has no assets. If he has, the expenses come out of the assets and the insolvent is not troubled. My experience is not that the Insolvency law is "sparingly" used. On the contrary it is taken advantage of as often as possible to the chagrin and injury of many creditors.
- The points 5 (a) to 5 (d) are dealt with in paragraph 2 of the memorandum. At present imprisonment is practically, though not theoretically, restricted to cases of fraud and contumacy. Cases of innocent but indigent debtors being sent to jail are, as far as my experience goes, very rare. Any further restriction will, in the case of the petty merchant and the agriculturist, lead to more insistence on *mortgages* and *pledges*. Those who cannot give any such security will not have the same credit as they have now.
- I do not think that the power of arrest and imprisonment does to any *appreciable* extent lead to speculative lending. Most often these speculative transactions are entered into with expectant heirs or young men who have recently inherited much property, and not with persons having no property or having no prospect of getting property. In the case of these young men the creditor looks more to the properties they have, or they hope to get, than to the prospect of imprisoning them and putting pressure on others. So any further restriction on imprisonment while affecting the credit of the poorer man will not touch this evil appreciably. The real reason why these speculative transactions are so common as they are now is that the principles enunciated in Indian Law Reports, XX Bombay, 367 (*Moli Gulabchand v. Mahomed Mehdi Tharia Topan*) are not always kept in mind and the onus of proving want of consideration and the want of *bona fides* in the transaction is wrongly thrown on the young debtors in such cases. As these transactions often take place in secret, the burden cannot be effectively discharged and the debtor is made to pay. If the transactions are carefully tested with reference to those principles and the courts insist on the creditors proving the payment of money and their *bona fides* beyond a reasonable doubt, I think sufficient check on such transactions will be found, especially when the proposed Money-lender's Act is passed giving power to courts to reduce the rate of interest charged. The social consequences

5. (c) Whether persons not legally or even morally liable for the debt are constrained to pay the debt. (Memorandum, paragraph 2.)

5. (d) Whether the debtor is often compelled to borrow anew, frequently on more usurious terms, to pay the debt. (Memorandum, paragraph 2.)

6. What effect will such enquiries and placing of restrictions on imprisonment have on the work of the courts. (Memorandum, paragraph 3.)

7. Will the placing of restrictions on imprisonment raise the general level of interest demanded. (Memorandum, paragraph 4.)

8. Whether there are any objections to amending the Civil Procedure Code by granting power to courts other than the Small Cause Court, Madras, to order the payment of the decree amount be postponed or be made by instalments, without the decree-holder's consent. (Memorandum, paragraph 6.)

9. Whether the period of limitation prescribed by section 48, Civil Procedure Code, can be reduced to, say, three years in cases of money decrees of less than a certain amount. (Memorandum, paragraph 6.)

now than they used to be. I think even the little fear that now exists should not be taken away from these spendthrifts. Such a fear tends in some cases to keep these young men from the money-lender now, and their paths should not be made easier.

Such instances are very rare, as the social consequences of imprisonment are less feared now, and even if imprisonment is debarred other means of bringing pressure on such persons will be easily found by the money-lender, such as attaching their properties as that of the judgment-debtor who lives with them. This will lead to open enquiry and some loss of prestige. The claimant may ultimately succeed. But he would have been sufficiently disgraced or worried. He may, no doubt, apply for monetary compensation. But that cannot wipe away the disgrace and the worry altogether.

These cases too are very rare. Most often a professional money-lender is not willing to drive a debtor to another rival money-lender by insisting on the debtor's imprisonment. He only uses the threat of imprisonment to get a renewal of the old bond with higher interest. If courts are given power to interfere with rates of interest agreed to be paid in such circumstances, it will be enough.

Looking at the few cases in which creditors insist on sending judgment-debtors to jail, an inquiry into the financial position of these judgment-debtors in those few cases will not affect the work of the courts very much one way or the other.

I do not think that the rate of interest will rise appreciably. If anything, it will decrease. If a debtor cannot be imprisoned, the creditor will ask for some property to be given as security. It is common knowledge that where other kinds of security are offered the rate of interest is much less than where there is only personal security of the debtor.

This point is found in paragraph 6 of the memorandum. I see no objection to the power being given to all courts, provided that orders granting time to pay up or allowing payment by instalments are expressly made appealable. No doubt they may be subject to appeal as coming within the definition of a decree under section 2, Civil Procedure Code. It is desirable to make the matter clear.

I think this is not desirable. Execution proceedings are not prolonged for more than one or two years in cases where the judgment-debtor has any property to be proceeded against. It is only when he has no property that the creditor waits. The cutting down of the period will only force the hands of the creditor and incline him to send the judgment-debtor to jail in order to put pressure on him to disclose any property which, the creditor believes the judgment-debtor may have possibly concealed. The long period of twelve years now given is found to be dangerous in some cases because it assists some fraudulent creditors who get *ex parte* decrees by committing fraud as to service of summons, and, who wait till the records as regards the service of the summons are destroyed and thus prevent the judgment-debtor from taking effective steps to set aside the *ex parte* decree. They rarely take out effective execution till then, and only keep the decree alive by putting in an execution petition

once in three years and getting it dismissed by not paying batta. The judgment-debtor has no knowledge of this. When a notice of the execution is really served on him he comes to know of the decree for the first time. But he is unable to show that the decree was wrongly passed as the materials with which he could prove want of proper service have been destroyed. To avoid this result either of these two courses may be adopted—

(1) preservation of the records showing the service of summons on which the judgment-debtor was declared *ex parte* till the period allowed under section 48 is over;

(2) repealing the provision which makes every execution petition, or a step in aid of the execution, a fresh starting point of limitation by amending article 182 (5) of the Limitation Act. I would insist on the creditor paying batta for every execution petition he puts in, till the judgment-debtor is actually served or till the court holds that further attempts are then useless. Failure to pay the batta should deprive him of the advantage of that petition being a fresh starting point. Then the judgment-debtor will come to know of the decree in time to get it set aside, if it has been obtained by fraud. Of these two, the former can be easily brought about. The latter involves legislation by the Imperial Council which the Government of India may not easily undertake.

II. I have two more points to add. Under the law, as it stands at present, a creditor has the option of proceeding against a judgment-debtor's property or his person—*vide* section 51 and order XXI-11 (2), Civil Procedure Code. So even if the decree is for Rs. 20 and the judgment-debtor has Rs. 10,000 worth of property, a creditor can insist on the judgment-debtor being arrested. This power is sometimes used to wreak private vengeance by insulting a respectable man. If the arrest warrant goes to his house, there is little difficulty, as he can easily pay up. But he is often arrested at out-of-the-way places where he has gone to attend a marriage or a similar social function or when he is going on a journey. He is brought to the court-house before he can get back home to gather money and pay up. The insult is complete and he can have no remedy against the creditor for he was within his legal rights. To prevent this abuse and to make cases of imprisonment as rare as possible, I would suggest that this option should be taken away. I would suggest that a rule should be made that no debtor should be arrested if the creditor can get his money from the debtor's property. To enable the courts to give effect to it, a rule should be made that, with every application for arrest, the creditor should file a verified statement stating that the debtor has no property from which the whole or part of the decree amount can be realised. If any property is mentioned therein which can satisfy a reasonable proportion of the decree amount or if after notice under order XXI, rule 37, or when he is produced after arrest the debtor satisfies the court he has property against which the creditor can proceed, the court should have power to insist on the creditor proceeding against those properties first. This

can cause no hardship at all. In the case of mortgage decrees arrest cannot be ordered till the mortgaged property is sold. Why should an ordinary creditor be in a better position. If the creditor makes a false statement, the judgment-debtor must be enabled to get compensation from him, as in the cases of unnecessary arrest or attachment before judgment. The creditor can also be prosecuted for making a false statement. A provision like this will make creditors ask for imprisonment only in rare cases and will effectually achieve the objects which Mr. Curgenven has in view.

*Secondly.*—The periods of imprisonment may be reduced. At present, the periods are six weeks where the decree amount is Rs. 50—or less and six months where the amount is over Rs. 50—*vide* section 58 of the Civil Procedure Code. I would reduce them to two weeks and two months respectively. It is not the discomfort of the imprisonment that acts as a deterrent in most cases. It is the social degradation and loss of credit. I think that the object of the provision for imprisonment in Civil Jail can be achieved with shorter periods.

## VII

*Letter*—from P. A. BOOTY, Esq., I.C.S., District Judge of North Arcot.

The Subordinate Judge of North Arcot and the District Munsifs of Chittoor, Ranipet and Vellore were consulted, and their views are given below.

2. *How far the placing of some restriction on imprisonment for debt would affect the credit of (a) the petty merchant or artificer and (b) the agriculturist.*—The Subordinate Judge says that it is assumed in your memorandum (1) that there is a lot of reckless borrowing and (2) that the present provisions of the Code regarding indigent and honest debtors are not properly worked by courts, but he is not sure if statistics of the last five or even ten years will warrant the first assumption with regard to this Presidency. Reckless borrowing, if it exists, is resorted to only rarely and only by men of means, not by petty merchants, artificers or agriculturists. Speculative lending is even rarer and is confined to the Presidency towns and to cases of financing litigation relating to property of extensive value outside. The second assumption too is not well founded in his opinion. Notice under rule 37 is intended only to persons of social standing and public servants and others whom the court may deem it hard to have arrested without previous warning. Under rule 40 an enquiry is made where the judgment-debtor applies for it. To make such enquiry compulsory would eventually tend to deprive the petty merchant, artificer and agriculturist of their means of getting loans and hinder sound loan transactions to a considerable extent, apart from the other consequences referred to in the memorandum.

The Chittoor Munsif does not think that the credit of the petty merchant or the agriculturist would be seriously affected by placing some restriction on imprisonment for debt. The money-lender seldom thinks of sending such people to jail when they are honest, and would not cease to lend by the passing of such a measure.

The Ranipet Munsif is also of the same opinion. He says that it is highly desirable to restrict imprisonment to cases of contumacy and fraud. He observes that rule 40 does not work favourably for the judgment-debtor. In the first place he has not sufficient time to show to the satisfaction of the court that he is unable from poverty or other sufficient cause to pay the decree debt. In the second place, leaving the debtor in the custody of a peon is out of question and once the court sends him to be detained in the prison pending enquiry he neglects to take steps to prove the poverty or other sufficient cause. Again, in 75 per cent. of cases the arrested persons are released with the consent, or on account of the default, of the decree-holder. As rightly stated in the memorandum, it is the second class of loans that gives all the trouble. For instance, Nattukkottai Chettis with small capital lend money on exorbitant rates of interest. Only poor men, the artificers and the daily labourers, usually resort to them. If the contemplated Money-lender's Act is passed, it will operate as a good check on this sort of money-lenders. Another instance of speculation is furnished by the petty agriculturists. They lease out their groundnut crops to agricultural labourers and take promissory notes from them. In not a few cases the produce falls far short of the estimate. The transactions are speculative on both sides, and though the defence is raised, they more often fail than succeed in their defence. Courts should be given free discretion in this sort of cases in the matter of passing orders under rule 40, and their orders made final. Generally petty merchants and artificers and agriculturists dread the idea of being in prison as amongst them the caste rules are stringent and they are looked down upon by their fellowmen on their return.

The Vellore Munsif is of opinion that the operation of rule 40 should be made compulsory in every case.

3. *The bearing of the law of insolvency on imprisonment for debt.*—The Chittoor Munsif says that there is no provision in the Provincial Insolvency Act empowering courts to pass a receiving or protection order, and there is absolutely nothing in the Code to debar a creditor from causing his debtor to be imprisoned merely because his debt has been scheduled, and suggests that these defects have to be remedied.

The Ranipet Munsif thinks that if the law of insolvency is amended as proposed, it will be an effective check against swindling debtors.

The District Munsif of Vellore is of opinion that the law, as it is worked, gives more scope to the dishonest debtor to escape arrest and imprisonment and that it is very necessary to alter the sections 14 and 15 of the Act so as to haul up all the insolvent's past life in order to consider whether he is deserving of the court's protection. The provision for levying fees should be made discretionary with courts.

4. *Payment after decree to be postponed or made by instalments.*—The officers consulted have no objection to offer.

5. *Reduction of the period of limitation.*—The Subordinate Judge and the Ranipet Munsif agree to a reduction. The former would fix the period at four years and the latter at three years in regard to decrees for less than Rs. 50. The latter would also fix it at six years in regard to decrees for sums not exceeding Rs. 200. But the District Munsifs of Chittoor and Vellore object. The former thinks that the curtailment will tempt even solvent debtors to be dishonest as they will try to throw greater obstacles than now in the realization of debts. The latter thinks that the reduction will press hardly on all those who are not professional and vigilant money-lenders, will not improve matters as against professional money-lenders and will not put an end to the evil of reckless borrowing or lending at exorbitant interest. It will tell against all the common money-lending among the middle classes, who are not sufficiently alert yet.

6. As regards my own opinion upon the whole question, I do not think that any appreciable hardship is being inflicted upon deserving debtors. If the debtor is really indigent and unable to pay, it is most unlikely that the decree-holder will waste his money in obtaining arrest and in maintaining the debtor in jail. If the debtor has property and has placed it beyond the reach of the court, arrest and imprisonment is practically the only means of making him pay up, for it is so easy in this country for a man to keep his property where it cannot be touched. Arrest is more a threat, and usually a fairly effective threat, to make the debtor pay up rather than anything else. As regards debtors brought under arrest before the District Court, they intimate an intention to apply for insolvency and get released upon security for their appearance as often as not.

### VIII.

*Letter*—from M.R.Ry. K. KRISHNAMA ACHARIYAR Avargal, Subordinate Judge, Chittoor.

*Dated*—the 16th December 1914.

With reference to your demi-official, dated 10th December 1914, I beg to state as follows.

The memorandum seems to proceed on the assumption that there is a lot of reckless borrowing and loans can be obtained with a fatal ease in this country and that the present provisions of the Civil Procedure Code intended for the relief of really indigent and honest debtors are not properly worked by the courts. The suggestions made in the memorandum are, I understand, made partly with a view to minimise such reckless borrowing and partly with a view to give relief to really indigent debtors who have to borrow for *bona fide* purposes.

I am not sure that correct statistics of the cases in which judgment-debtors were imprisoned for their decree debts by the various courts in this Presidency during the last five or even ten years will warrant the above assumption so far as *this Presidency is concerned*. So far as my own experience goes, reckless borrowing which, if it exist, is only rare, happens only in the case of men of means, men who can offer security either by way of immovable property then owned and possessed or expected to be inherited later by them, or by way of their income from their occupation, not in the case of petty merchants, artificers or agriculturists, while speculative lending is even rarer, it being confined, besides, to Presidency towns and to cases of financing litigation for recovery of property of extensive value outside. The assumption that the intention of rules 37 and 40, order XXI of the Code, is not properly carried out by the courts is also not well founded in my opinion. It is not to every judgment-debtor that notice is intended to be issued under rule 37 before ordering arrest, but only to persons of some social standing and public servants and others whom the courts may deem it hard to have arrested without previous warning, in my opinion, and notice is given to such persons, while, as for rule 40, there is enquiry made, so far as I am aware, where the judgment-debtor, whether appearing on notice and under a warrant of arrest, *applies* for relief under it. If enquiries are not made oftener it is only because judgment-debtors do not apply for it and I do not think that courts should be made to hold such enquiry *suo motu* when the aggrieved party does not ask for relief under the rule. To make it compulsory on courts to do so would, in my opinion, eventually only tend to deprive the petty merchants, artificers and agriculturists of their means of getting necessary funds for the pursuit of their occupations in life and hinder sound loan transactions to a considerable extent, apart from the other feared consequences referred to in the memorandum.

The suggestions, however, in regard to the amendment of order XXI, rule 11 (2) of the Civil Procedure Code, by empowering courts to order payment by instalments irrespective of the

decree-holder's consent and to the amendment of section 48 by the reduction of the period of limitation from twelve years to shorter period, which I would put at four years in the case of decrees of less than Rs. 50, are worthy of adoption, and these along with the other existing provisions of the Code and the intended Moneylenders Act and the Insolvency Act will, in my opinion, give sufficient relief in all cases of honest indigent debtors, while not in any way affecting prejudicially sound loan transactions.

## IX

*Letter*—from M.R.Ry. A. BHIMESWARARAO PANTULU Garu, District Munsif, Chittoor.

*Dated*—the 16th December 1914.

With reference to the memorandum on imprisonment for debt communicated for my opinion, I beg to state as follows :—

(1) I do not think that the credit of the petty merchant, artificer and agriculturist to borrow, would be seriously affected by placing some restriction on their imprisonment, when they are honest and unable to pay their debts by reason of adverse circumstances. The money-lender seldom thinks of sending such people to jail when they are honest and would not cease to lend monies by passing such a measure.

(2) As regards the bearing of the law of insolvency on imprisonment for debt, there is no provision in the Provincial Insolvency Act empowering courts to pass a receiving or protection order protecting the insolvent from arrest or detention before adjudication. There is also absolutely nothing in the Code to debar a creditor from pressing his claim by causing the imprisonment of the debtor merely because his debt has been scheduled in the application for insolvency. Some express provision making the debtor immune from imprisonment after the presentation of the insolvency petition and before the adjudication may therefore be inserted in the Code (vide the article on imprisonment during Insolvency Proceedings published in the Madras Weekly Notes, 1914, at page 1).

(3) There can be no objection to amend the sub-rule 2 of rule 11, order 20, and make the order for payment by instalments independently of the consent of the decree-holder, when there are sufficient reasons for it. The only objection for making such an order hitherto is that it alters the decree, which cannot be done without consent of both parties. But this objection can be got over by amending also the review sections of the Code, if necessary.

(4) Next as regards the proposal to curtail the period of limitation prescribed by section 48 to three years, I think the curtailment tempts even the debtors, who are able to pay, to be dishonest. They try to throw greater obstacles than now in the realization of debts within the shorter period of three years, with the idea that they can be immuned afterwards.

## X

*Letter*—from M.R.Ry. V. DANDAPANI PILLAI Avargal, District Munsif, Ranipet.

*Dated*—the 22nd December 1914.

With reference to the memorandum on imprisonment for debt of Mr. A. J. Curgenvin, I.C.S., I have the honour to submit as follows :—

When a judgment-debtor is brought under arrest it is not usual for the courts to inquire into the circumstances and conduct of the debtor and the courts seldom exercise the discretion they possess under the rule (rule 40, order XXI). There are, in my opinion, several reasons why the rule does not work favourably for the debtors. Under rule 38 (order XXI) the officer entrusted with the execution of the arrest warrant has to bring the debtor before court with all convenient speed, so that the judgment-debtor is practically denied the opportunity after arrest, to prove to the court's satisfaction, that he is unable from poverty or other sufficient cause to pay the amount of the decree, or if that amount is payable by instalments, the amount of any instalment thereof. Further, under clause 2, rule 40, the court has, before making any order under sub-rule (1), to take into consideration any allegation of the decree-holder touching any of the matters detailed in sub-clauses (A to E) of paragraph 2. In nearly all the cases, the decree-holders would generally succeed in the enquiry contemplated by this rule. On the date the debtor is brought before court, the evidence would not be ready on both sides, and the decree-holder would be unwilling to the release of the debtor on his furnishing security to the satisfaction of the court. If the decree-holder is so inclined, he would not accept the adequacy of the security tendered and this would involve the security being tested which entails further delay. Leaving the debtor in the custody of an officer of the court is out of question, as either the debtor or the decree-holder would have to pay the detention batta for the officer of the court in charge of the debtor and the money in the shape of batta to be so paid will not be a negligible sum, as the date of inquiry would have to be fixed with reference to the distance from the court to where the parties and the witnesses reside. Generally the date of the inquiry would have to be fixed from fifteen days to a month from the date of arrest. There are no civil prisons attached to each court and the civil prison is generally at a distance from the court (except probably in the case of courts in the district head-quarters). Once the court sends the debtor to be detained in the civil prison pending inquiry, the debtor neglects to take steps to prove his poverty or other sufficient cause. He thinks once he is put to the indignity of being sent to the prison, he thinks he may as well serve the full term in the prison instead of being re-arrested and sent again to the prison, if in case he failed to prove poverty or other sufficient cause. In

several cases, the decree-holders take out arrest warrants and get the debtors arrested to keep the decrees alive and generally consent to their release when they are brought before court and thus obviate the necessity for any inquiry under clause 1 of rule 40. Some decree-holders who had obtained decrees ex-parte, take out warrants and get the judgment-debtors brought before court, and consent to their release, so that the debtors might not have the chance of getting the ex-parte decrees set aside. In 75 per cent. of cases where the debtors are brought before court they are released with the consent of the decree-holders or released for want of payment of jail batta by the decree-holders. In such cases the decree-holders' intention apparently is not to send the debtors to prison, but the arrests are made for one or other of the reasons mentioned above. It is only in cases where the feelings between the decree-holder and the debtor has become embittered either on account of the frivolous and vexatious contest made by the debtor before the decree was passed, or by the defendant's neglect to discharge the decree debt or on account of the unsuccessful contentions raised by the debtor after decree, relating to the execution, discharge or satisfaction of the decree that the decree-holders insist on sending the debtors to jail even though the decree-holders could very well realize their decree amount if they proceeded against their property. Also in cases where the debtor thought that he had a good defence in the way of part-payment or full discharge in the suit, but was unable to legally prove the defence before court, the debtor generally conceals his moveables or places them beyond the reach of the creditor or fraudulently transfers his immoveable properties and is prepared to get arrested at the instance of the creditor and serve out the time of imprisonment and thus defeat the creditor from realizing any portion of the decree amount. The decree-holder also in such cases, out of vengeance, sends the debtor to jail and it is in those cases, I find in my experience, that the decree-holder pays the jail batta for the full term of imprisonment provided by law. In other cases the debtors are generally discharged after the first month or so after commitment for want of jail batta.

It is highly desirable, as is suggested in the memorandum, to restrict imprisonment to cases of contumacy and fraud. In all cases where the court is satisfied that the debtor owns sufficient property, moveable or immoveable or has money locked up in trade stock or outstanding debts and is unable immediately to render the same into cash for payment towards the decree debt, on account of some temporary difficulty and if some time were given, the debtor could very easily discharge the debt, he may be released unconditionally.

The memorandum divides the loan transactions between moneylenders and their clients into two fairly distinct classes:—

(a) Loans made to men of some substance on ascertained security and (b) loans made to men of little or no substance in a speculative manner, and as regards the first class of loans, it is considered, that this kind of loan represents a good system of credit, that a high proportion of such cases never come into court or if they do, the decree is satisfied without regard to imprisonment, that therefore the restriction of imprisonment to cases of fraud or contumacy would not therefore prejudice good credit to a material extent. Respectable moneylenders generally advance loans for reasonable interest to men of sufficient solvency. They really have no difficulty in realizing the money without suits or, in case the decrees are passed, the decree amounts out of court. In rare instances only such decree-holders resort to execution for the realization of the decree amounts. As is rightly set out in the memorandum, it is the second class of loans that gives all the trouble. I may mention, for instance, the moneylenders of the Nattukkottai Chetties who with small capital lend money on exorbitant rates of interest as  $3\frac{1}{2}$  to  $3\frac{3}{4}$  per cent. In many cases, the Chetties take the interest in advance and the money, it is provided in the debt document, should be paid in instalments and if on default of payment of one instalment, the entire sum should become payable. It so generally happens that a debt document which mentions a loan of Rs. 25 the cash advanced is less than the sum for which the document was executed and when the debtor is sued, he is sued for double or treble the amount he actually got for the transaction. As the Tamil proverb goes, the Nattukkottai Chetti cares more for interest than for the principal. Usually, only poor men, the artificers and the daily labourers, who resort to these Nattukkottai Chetties and consent to pay such exorbitant interest. The hands of the court are at present tied and save in exceptional cases, the court has to decree the entire amount and has no discretion to reduce the rate of interest stipulated for. If Moneylenders Act, which it is proposed to pass, comes into force, it will, by itself, operate as a good check on this sort of moneylenders. These moneylenders shrewd business men as they are, will then suitably shape their transactions and would not be ready to advance money except on good security. Another instance of speculation is made by the petty agriculturists. These petty agriculturists lease out groundnut crops grown by them on their lands to agricultural labourers. The crops on the fields are estimated generally by guess and for the estimated amounts promissory notes are taken and in not a few cases, the produce falls far short of the estimate. The agriculturists are greedy and would not make any reduction and these promissory notes not infrequently come up before the courts. The transactions are speculative on both sides and though the defence is raised, the defendants more often fail than succeed in their defence. Presiding officers of the court are generally in a position to spot out this class of litigants appearing before them after, say, a few months after they take charge of the court (not from any extra-judicial sources, but from what takes place before them in public courts) and I would suggest the courts should be given free discretion in this sort of cases in the matter of passing orders under rule 40. The courts would properly and freely exercise this discretion if the orders passed by them under rule 40 are considered final and the courts are not fettered by the rules of procedure attendant on appealable matters. This mode of procedure would act as a considerable check on reckless lending and borrowing. Generally petty merchants and artificers

and the agriculturists dread the idea of being in civil prison, as among them, the caste rules and sentiments are stringent and they are looked down upon by their fellow men on their return. In these cases, if arrests are made, the evil effects mentioned in (a) and (b) at the foot of page 1 of the memorandum are more prominent. I am of opinion that a measure to place some restrictions on imprisonment would not in any great degree affect the credit of (a) the petty merchant or artificer and (b) the agriculturist.

If the Law of Insolvency (Act III of 1907) is amended, as it is proposed to be done, it will be an effective check against swindling debtors who generally resort to the insolvency proceedings, as they know that under the law, as it now stands, the mere filing of the insolvency petition exempts him from arrest and imprisonment and that he need not apply for or indefinitely postpone the getting of the order of discharge.

I would strongly suggest that the law applicable to Small Cause Court, Madras, should govern also mufassal courts. The courts should have the power to order payment of the amount decreed, to be postponed or made by instalments irrespective of the wishes of the decree-holders in the matter. To quote one instance how this rule works hardship on the debtors :—Moneylenders take promissory-notes or bonds from low-paid officials in Government employ or Railway companies and other institutions whose pay is not under law liable for attachment, either on their own account or as security for others whom they feel bound to accommodate. When decrees are passed, these public servants or officials are for several reasons, unable to appear (some are ashamed to appear as defendants, some do not obtain leave of absence) and ask for an instalment decree. The decree-holders generally take out execution and apply for arrest against the public servant or official, as he is aware that he would not be willing to go to jail (there is also the fact that if processes are taken, they are placed in an awkward situation in their own offices), insist on the full amount being paid by the official brought under arrest. Such debtors generally pray for a concession to pay the decree amount by instalments every month out of his pay and the decree-holder is obstinate, to serve his own ends. The court is deprived of a very just and highly necessary power on those occasions by the rules of law as they now stand.

With reference to clause (b) of paragraph 6 of the memorandum that some reduction of the period of limitation is very desirable, I would suggest three years in all cases of money-decrees excluding costs which on the date of the decree do not exceed Rs. 50 and similarly six years, in cases of money-decrees excluding costs, Rs. 200.

## XI

*Letter*—from M.R.Ry. T. A. NARASIMHA ACHARIYAR Avargal, B.A., B.L., District Munsif, Vellore.

*Dated*—the 15th December 1914.

With reference to your demi-official, dated the 10th instant, I have the honour to state as follows.

2. *Imprisonment for debt*.—In my opinion the operation of the rule 40 in order XXI should be made more extensive. It is at present put into practice in the case of public servants and men of social standing as pointed out. The neglect to apply this wholesome practice as far as possible all round is not only traceable to the ignorance of the defendant but also to the want of sufficient time on the part of the court for making some good enquiry on or before arrest of defendants. In my opinion the law should be so altered that in all cases notice should be issued for such an enquiry as a matter of obligation even in cases of execution petitions within a year of the decree. This will be more conducive to both parties in the long run—both creditor and debtor. In my opinion the right of the court to order instalments should be statutorily recognized under all circumstances before and after decree irrespective of the wishes of the plaintiff or the consent of the decree-holder. Such a measure will materially check reckless lending to those who cannot repay at all, while it will not hamper the petty merchant, or artificer or the agriculturist from borrowing. Connected with this point is the query about the shortening of the period of limitation to money-decrees under a fixed amount—say Rs. 500. I am entirely opposed to it, as there is no reasonable basis for the alteration of the periods of limitation. It will press hard on all those who are not professional and vigilant moneylenders. It will not improve matters against the professional moneylenders. It will not put an end to the evil of reckless borrowing or high-handed lending. It will tell against all the common moneylending among the middle classes who are not sufficiently alert yet. The Bar here are of opinion that after six years of the decree, personal remedy may be taken away in all cases.

3. *Insolvency proceedings*.—I have already given it as my humble opinion on a similar reference that the law, as it is worked, gives more scope to the dishonest debtor to escape arrest and imprisonment. Therefore it is very necessary that the sections 14 and 15 of Act III of 1907 should be so altered as to give the power to haul up all the insolvent's past life to consider whether he is worthy and deserving of court protection. Connected with this matter is the provision for levy of fees, etc., for publication charges. This ought to be entirely taken off as obligatory, but should be made discretionary with courts, which power may be safely entrusted to presiding Judges.

## XII

*Letter*—from J. G. BURN, Esq., I.C.S., District Judge, Madura.

*Dated*—the 10th January 1915.

I have consulted some experienced judicial officers of this district with reference to your memorandum on imprisonment for debt which accompanied your demi-official of 8th

December 1914. They are of opinion that the amendment of the Insolvency Act referred to in paragraph 5 is desirable and that there is no objection to the proposal in paragraph 6 (a). With regard to paragraph 6 (b), they consider that a limitation period of three years is too short. I agree with these opinions. I think a limitation period of six years might be adopted.

2. It is true that little use is made of the provisions of order XXI, rules 37 and 40. In a great number of cases the judgment-debtor absconds or conceals himself if he is aware of the issue of a warrant. A large proportion of such processes are returned unexecuted. The courts are reluctant to give opportunities for evasion and in most cases they have no materials before them to enable them to judge whether it is desirable to issue a notice. Judgment-debtors seldom plead poverty when they appear before the court, and the courts are unwilling to start inquiries of their own motion. If the debtor is known to be unable to pay and to have no one likely to make payment for him, it is not to the interest of the decree-holder to maintain him in jail. In other cases, the plea would be opposed. A Subordinate Judge points out that in most cases the inquiry would be protracted and that a judgment-debtor, who is really without means, would find it difficult to furnish security or to pay the *batta* necessary for his own custody pending the orders of the court.

3. The devices for obstructing execution are many and varied. Experience shows that in a large proportion of cases it is very difficult to obtain satisfaction of a decree. Restrictions on imprisonment would add to these difficulties. What effect this would have is hard to foretell. There would probably be an increase in the number of secured loans. Transactions with persons unable to furnish any security would decrease and loans made to such persons would be saddled with more onerous conditions. In this connection, I may remark that it is very doubtful whether the provisions of the proposed Moneylenders Act would really prove effective.

### XIII

*Letter*—from S. G. ROBERTS, Esq., I.C.S., District Judge, North Malabar.

*Dated*—the 18th January 1915.

I received your demi-official letter, dated 8th December last, and the memorandum which accompanied it in due course. I invited the opinions of the District Munsif of Cannanore, the senior Munsif, in this district and Rao Bahadur Narayana Kurup, Government Pleader and Public Prosecutor, both men of experience and well fitted to pronounce an opinion on the points raised in your memorandum. Copies of their letter or notes form enclosures to this letter.

2. It will be observed, that they are both agreed, that the law as at present stands affords sufficient protection for indigent judgment-debtors and that any relaxation of the rules now obtaining would afford further facilities for fraudulent judgment-debtors to put obstacles in the way of judgment-creditors realizing their debts. In my experience as a Judge I have found that judgment-debtors, even if they have the means to pay up their debts, try their very best to evade payment until coercive measures are resorted to and but for such measures the amount would in many cases have remained unrecovered. I have not known any instances where a real pauper has been sent to prison or a man who had the means to pay the amount had been marched off to jail because at the time of arrest he happened to have no money with him just then. Whenever an honest debtor wanted time to find money to pay up the debt it is given him.

3. The ignominy attached to a debtor who has the means to pay up a debt for refusing to discharge his just obligations even under a process of court is not such as to materially affect his status in society in the prevailing condition of things in India and therefore unless and until the *morale* of the people vastly improves it would be (excuse the word!) preposterous to assimilate the procedure obtaining in England and other countries to Indian conditions.

4. In fact, in matters like this, so long as the existing practice is opposite that prevailing in England it may be presumed that the existing practice is pretty well suited to India. At the cost of one pound sterling and of from one to four hours' seasickness one arrives from England in France and there finds people who, from the cradle to the grave, are as distant from us Britons in ideas, ideals, habits and customs as can possibly be; and if the differences can be supposed to diminish as one goes East I can only imagine it would be on the principle of "the farther you go the fewer." I believe that imprisonment for debt is the curse of the honest poor in England; but that certainly is not the case here.

5. It is true that notices under rule 37, order XXI, are very seldom issued and enquiries under rule 40 are very seldom made before a judgment-debtor is sent to prison, but where a debtor is produced in court and it appears to the court that the judgment-debtor is unable from poverty or other causes to pay the amount he is let off with the decree-holder's consent with permission to rearrest or is granted time or is allowed to pay the debt in easy instalments and it is only in the case of recalcitrant, contumacious or fraudulent debtors that imprisonment is insisted on by the decree-holders. People do not pay the cost of board and bedding in a Civil jail unless they think they will get their money back; that is my experience; imprisonment for debt is *not* resorted to as a means of mere revenge because the imprisonment costs the decree-holder a monthly sum in cash down and there are cheaper ways of revenge than that; ways that give more revenge for the same money.

6. From the statistics which have been collected from the several courts for the last three years (herewith sent) it will be found that cases in which judgment-debtors were sent to jail

were very few when compared with the number of execution petitions received and that judgment-debts often consist of sums not heavy or numerous enough to furnish data as to how far the suggested modification would influence the lending or borrowing of money by any class of people in this District.

7. I do not myself wish to see courts in this district have greater resort to enquiry under rule 40 than is at present the case. I do not think that the proposed change would in any way affect the rate of interest in the money market or swell the work of the courts to any appreciable extent, but I think it would certainly damage the credit of poor people at their grocer's, and, as most people are poor and *all* depend on the credit they get from the grocer, I do not want any change in the present state of affairs, as I am sure it would cause suffering.

8. In my letter to the Registrar of the High Court, No. 422, dated 17th August last, I have dwelt at length on the proposed amendment of the Provincial Insolvency Act and I hope that the Act, in the new form, would remove the difficulties indigent debtors have in getting themselves declared insolvent and would at the same time prove a check upon fraudulent debtors seeking the asylum of Insolvency.

9. I do not find any objection to the courts being authorized to order payment of the amount decreed being postponed or made by instalments independently of the consent of the decree-holders, so long as it is laid down that this shall only be done after actually hearing the decree-holder or his pleader and so long as the reasons for ordering payment by instalments are recorded at length. But I think that payment by instalments should be encouraged where the Judge is satisfied of the honesty of the debtor, especially in the case of promissory notes at burdensome rates of interest. I am not in favour of the doctrine of the sacrosanct character of promissory notes, except in strictly commercial cases. I do not see why courts should not protect persons who have been entrapped into very bad bargains over promissory notes as much as they protect other debtors and if we cannot cut down the interest (which often is scandalous) the best thing is, to grant repayment by very easy instalments. But I would never order this without actually hearing the decree-holder or his pleader; an order of the kind should never go by default.

10. Personally I agree heartily with the reduction of the period of limitation from twelve years to six for execution of decrees. I hope you will be able to carry this through. If you cannot, it would be a great advantage if the decrees ceased to carry interest after six years. This would obviate all hardships to soft-hearted persons, who had given their debtors time and were suddenly left in the lurch, and to the heirs of such persons, and yet it would not leave room for the present most objectionable practice of letting the interest year after year swell and swell like a tumour. Forgive the comparison; it is unpleasant but it is really apt. I think the idea of a growing debt on land or other estate ought to arouse as much horror in one's mind as a tumour on a human body.

*P.S.*—I must give a final instance of the difference between England and India; in twenty-one years' service I have only once heard of any one being abused in the street for taking usurious interest. "Usurer" would not convey anything to the people among whom I have served. It practically does not exist as a term of abuse. And yet usury is at least as common here as in England.

#### XIV

*Letter*—from M.R.Ry. M. NARASINGA RAO Avargal, District Munsif, Cannanore.  
*Dated*—the 10th January 1915.

With reference to Mr. Curgenven's memorandum on "Imprisonment for Debt," sent by you to me for opinion, I have the honour to report as follows:—

I beg leave to protest against further facilities being afforded to judgment-debtors in India in the conditions now prevailing. It has been said, and well said, that the difficulties of creditors in India do not end with their obtaining decrees but only begin then. Fraudulent judgment-debtors form the rule. The law, as it now stands, affords them plenty of loopholes for escape. Short of abolishing imprisonment for debt altogether—which would be a calamity under conditions now prevailing in India—an obligation to hold the enquiry of the kind suggested by Mr. Curgenven would increase the judgment-debtors' power to defraud their creditors to a very substantial extent. So far as I can see, there is nothing to show that courts are systematically refusing to make enquiry as to the circumstances of a judgment-debtor under order XXI, rule 40, Civil Procedure Code, if invited to do so. The cases in which courts have acted under that rule in temporarily discharging judgment-debtors may be few. But I believe that the cases in which courts, by reasoning with the decree-holders, have induced them to consent to the discharge of judgment-debtors temporarily, either without any payment or with a small payment made, are fairly large. In the latter case, the debt is practically allowed to be paid in instalments.

I do not expect that borrowing, even reckless borrowing, would be checked to any appreciable extent by amendment of the law in the direction suggested. The causes for borrowing in India are more economical and social than otherwise. I think that unless these conditions are altered, borrowing will go on as merrily as ever. In my opinion there is no question of the credit of the paddy merchant or artificer or the agriculturist being affected. Mr. Curgenven refers to the necessity friends and relations of the judgment-debtor feel of paying

off the judgment-debt. This is when the debt has been borrowed and the debtor finds himself unable to pay it. But what is there to show that the friends and relations will not be ready to oblige the person who wants to borrow the debt, by joining in contracting it? It may plausibly be said that they will scrutinize the necessity for the debt, before they make themselves parties to the borrowing, whereas in the case of a debt repayment of which is decreed, no such considerations are likely to influence them. But there is another aspect of the case. There is no reason to believe that the friends and relations are more prudent than the persons who want the loan. They may expect that the latter may be able to repay the loan himself. And once they have made themselves responsible for the debt, the law will not allow them to shirk their responsibility. In the case of a judgment-debtor who is unable to pay his debt, the friends and relations who are willing to help him act with their eyes wide open, with the probability that the judgment-debtor may never be able to recoup them. I do not think, moreover, that the cases in which friends and relations help the judgment-debtor by providing him with funds to pay off the decree debt are numerous. Oftener, they help him in putting obstacles in the way of the decree-holder in realizing the debt.

The plaintiff in a suit must be distinguished from the decree-holder. A suit may be speculative or unjust. A decreed debt should be presumed to be just when a debt is decreed. It is the function of the court to afford facilities for its realization, as far as it is possible or just to do so. The law, as it stands, is sufficient to prevent undue oppression. Many flagrant attempts at evasion of payment of debts come under the notice of the courts. The pity of it is that they are not as few as they ought to be. This is an age of transition, in which many aspects of sinister litigation come before courts. That is why the present day litigation is so difficult and so complicated. It was not so bad, I believe, a generation ago; the people were less clever. It will not be so bad, I trust, a generation hence; the *morale* of the people is bound to rise. Then it is time, in my opinion, to bring the law into conformity with the English law.

I agree that the amendment of the law will not materially affect the rate of interest

An insolvency law, passed with the best of intentions, has been taken undue advantage of by *fraudulent* debtors. In a previous report, I have referred to the evil. The law should be surely set right as proposed.

As regards the power of the court to direct payment of the decree amount by instalments after the decree, it can be as already shown, indirectly exercised by the court under order XXI, rule 40, Civil Procedure Code. I do not think that any amendment of the law is required. To give an impression, however wrong, that the judgment-debtor is a more favoured individual than the decree-holder, is, under the present conditions, to put more difficulties in the way of the realization of just debts.

I beg to propose that the limitation for execution of money decrees for Rs. 500, or less may be reduced to *six* years.

## XV

*Letter*—From M.R.Ry. Rao Bahadur T. C. NARAYANA KURUP Avargal, Government Pleader and Public Prosecutor, Tellicherry.

It has been well said that the difficulties of a plaintiff in India begin after his obtaining a decree; and to give further facilities to the judgment-debtor to avoid arrest and imprisonment in execution of decrees would only add to the difficulties of the decree-holder. I have been at the bar for the last twenty-seven years and I can confidently assert that it is only in very rare cases that an indigent debtor who cannot afford to pay his debts is sent to jail. On the other hand I have known instances in which judgment-debtors come to court with money concealed in their pockets or in those of their friends or kariatthans, raise all sorts of possible objections to their committal to jail and pay up the decree amount immediately after the warrant of committal is issued. Such payments are not made as suggested in the memorandum by persons not legally or even morally liable for the debt or by the debtor borrowing anew on more usurious terms. This is mainly due to the reluctance of the average suitor in this country to pay his legitimate dues. The provisions of the Debtors' Act are not very often resorted to by debtors; but this fact is not due to the unwillingness of the courts to grant relief under that Act but to the consciousness of the judgment-debtor that in most cases he may not be able to satisfy the provisions of the Act.

*Paragraph 2 of the memorandum.*—It is very well to say that imprisonment should be restricted to cases of contumacy and fraud. But in actual practice it is difficult to define what is contumacy and fraud and still more difficult to prove them. Loans advanced to men of little or no substance in a speculative manner are rare in this district. The proposed measure, in my opinion, must prejudicially affect the credit of the petty merchant or artificer and the agriculturist. In petty shops articles liable to easy attachment may be little or nothing and implements of husbandry are not liable to attachment and persons may hesitate to lend money to petty merchants and agriculturists when they find that they cannot be arrested and imprisoned in execution of decrees.

*Paragraph 3.*—I am not prepared to admit that the proposed suggestions would diminish rather than increase the burden on the courts. The suits in this district are more in connection with lands than in respect of money transactions.

*Paragraph 4.*—I have no observations to make.

*Paragraph 5.*—There is a general complaint as regards the present Insolvency Act and the Act requires modification. The proposed suggestions would be welcome.

*Paragraph 6 (a).*—There is no objection to the proposed amendment.

*Paragraph 6 (b).*—I do not think it is safe or advisable to reduce the period of limitation from twelve years to six years.

## XVI

*Letter*—from J. C. FERNANDEZ, Esq., District Judge, Guntūr.

*Dated*—the 16th January 1915.

It is a fact that in practice the application of order XXI, rule 37 of the Civil Procedure Code is limited in extent, but this is due to the court not being in a position, when an application is made for the execution of a decree for money by the arrest and imprisonment of the judgment-debtor, to know in what cases its application is really called for. It is not to the interest of the decree-holder so applying for execution to disclose to the court any circumstances which would lead it to apply rule 37, and he takes good care not to hamper himself in the pursuit of the remedy sought by him by such disclosure. The court is therefore left when taking the initial step in execution to its unaided judgment regarding the advisability of calling rule 37 into operation and has to act *suo motu* without necessary data. Hence the failure on the part of the court to apply rule 37 except to cases of public or railway servants and persons of some social standing, the object being strictly not one which is dictated by the underlying spirit of rule 37—but, as stated in Mr. Curgenvén's memorandum, either to save the judgment-debtor's employer from inconvenience or the debtor himself from the indignity of a sudden arrest. The restricted application of rule 37 in these circumstances is, however, remedied by an application proceeding from the judgment-debtor himself under order XXI, rule 40 of the Civil Procedure Code on being brought before the court after arrest, or on his appearance in answer to a notice issued to him under order XXI, rule 22 of the Civil Procedure Code. Such applications are by no means infrequent—a fact which I can speak to from personal experience—and the debtor is not slow to avail himself of this remedy in cases which render resort to the insolvency law undesirable, not only on the ground of its cumbrousness, but also with a view to avoid the publicity and disabilities entailed by adjudication as an insolvent. When such applications are made, an inquiry is held by the court guided by the considerations laid down in rule 40, and the application for arrest is either allowed or disallowed according to the circumstances of each case. Sometimes the inquiry results in the court being satisfied that, though the judgment-debtor is not in a position to meet the debt in full, he is able to do so in part or by instalments, and the disallowance of arrest is made contingent on the judgment-debtor satisfying the decree debt to the extent he has the means to do. I have often had occasion in my capacity as a District Munsif and Subordinate Judge to deal with such applications, and it may safely be asserted therefore that the courts do exercise the discretion vested in them not to send a really indigent judgment-debtor to jail in an appreciable number of cases. Could any means be devised by which the beneficent object of order XXI, rule 37 of the Civil Procedure Code would be more extended in its attainment—and it seems to me that this object can only be achieved by making this rule compulsory instead of optional, as at present, the indigent judgment-debtor would have ample protection afforded to him from arrest and imprisonment for debt. If he neglects to avail himself of the opportunities he has to seek this refuge, he has himself to thank for the consequences.

2. I would not advocate as Mr. Runganadam Mudaliyar, Additional Temporary Subordinate Judge of Guntūr has done, the abolition of imprisonment for debt, convinced as I am of the necessity for its retention as furnishing a speedy and efficacious remedy for the recovery, in particular, of small debts such as the petty merchant or artificer, or the agriculturist, has occasion to incur. It is no doubt desirable to place restrictions on this remedy, for otherwise honest but indigent debtors would be placed at the mercy of heartless creditors who as a rule, especially the professional class of money-lenders, have no compassion for them. The legal process of recovery of a judgment-debt by the issue of a writ *ad satisfaciendum* against the body of the judgment-debtor is one which has the sanction of immemorial usage and its total abrogation would in my opinion result in more harm than good. It is no doubt desirable to place some restrictions on imprisonment for debt which would achieve the object of preventing a grasping creditor from needlessly harassing a really indigent debtor by resort to this method of recovery, but any remedial measure striking at its root must needs affect the credit of the small borrower. In support of this conclusion I would instance the case of the soldier who, under section 144 of the Army Act, 1881 (44 & 45 Vict., C. 58) is absolutely protected from arrest unless his debt exceeds £30. It is a well-known fact that tradesmen are reluctant to give credit to soldiers owing to the chances of recovery of debts from them being lessened by the immunity from arrest afforded to soldiers by law except in cases of debts exceeding £30. It is a reasonable inference therefore to draw that any serious curtailment of the existing right of the creditor to recover his debt by imprisonment of the debtor would operate in the same direction and lessen the credit of the small borrower. I fear too it will have the effect of enhancing the prevailing rates of interest—which even within the limits sanctioned by custom vary considerably—for the greater the risk the higher the compensation demanded for running it. In areas where the borrowing classes are possessed of some means on which the lender can build up hopes of recovery, and who is not

therefore likely to be influenced in his lending operations by the prospect of recovery by imprisonment alone, the effect produced may not be serious, but speaking from my experience of the Nilgiris district where this mode of recovery is more largely resorted to than perhaps anywhere else in this Presidency, I would say the result would be disastrous. There it is the poor Badaga who has frequent occasion to borrow from the Rowther lender, and in the great majority of cases the latter enforces his decree by the arrest and imprisonment of the judgment-debtor. I think the Badaga would have a poor chance of borrowing from the Rowther were the latter deprived of a remedy he finds so efficacious and on the faith of which his money-lending operations, mostly on a small scale, are carried on.

3. Since the coming into force of the new Provincial Insolvency Act III of 1907 there has been a larger resort to the insolvency law than before. It cannot now be said that sparing use is made of it, for under Act III of 1907 as it now stands, an adjudication of insolvency has practically become a walk-over by the relegation of objections thereto on the ground of fraudulent conduct from the initial stage to a subsequent one after adjudication. The Act certainly requires amendment in this respect. So far as my experience has gone, I cannot say that the fees charged in insolvency proceedings act as a deterrent to those who have to take them, for they are by no means heavy.

4. I am strongly in favour of the amendment of order XX, rule 11 (2) of the Civil Procedure Code, in the manner proposed. The necessity for the consent of the decree-holder after decree for making an order for payment by instalment has the effect of stultifying the rule, for it is but seldom that the decree-holder gives his consent. I see no reason why this relief should be made to depend upon the whims of the decree-holder and why he should be allowed to fetter the exercise by the court of its discretion in the matter. There is besides the anomaly that, at the time of passing the decree, the court has under the rule in question the power of making an order for payment by instalments, whereas after the passing of the decree it can only do so with the consent of the decree-holder. The object of the rule would be better served by the removal of this anomaly in such manner as would make the court the sole arbiter in both cases.

5. I am against the proposed curtailment of the prescribed period for the execution of decrees. It has often been rightly remarked that it is easy enough to obtain a decree and that the real struggle begins after a decree is obtained, for it is then that the debtor tries to circumvent the creditor by placing all sorts of obstacles in the way of his realizing the fruits of his decree. One common fraud practised by the debtor is to make a nominal transfer of his property to some conniving friend or relation, and this frequently results in claims by the latter to the attached property under order XXI, rule 58 of the Civil Procedure Code. Even after such claims are disposed of, the unsuccessful party is at liberty to bring a regular suit, which right is given to him by order XXI, rule 63 of the Civil Procedure Code. All this takes up considerable time, and the decree-holder is put off much beyond a period of three years in his efforts at realization. I think therefore that the existing period of limitation should be maintained in the interests of the decree-holder, which otherwise would suffer severely.

## XVII

*Letter*—from M.R.Ry. T. VARADARAJULU NAYUDU Garu, B.A., B.L., Subordinate Judge, Guntur.

*Dated*—the 7th January 1915.

In the matter of the memorandum of Mr. A. J. Curgenven, relating to imprisonment for debt, communicated to me for an expression of views, I may state at the outset that my views are in general accord with Mr. A. J. Curgenven's observations.

2. My practice has been to issue a notice under order XXI, rule 37, before issuing a warrant of arrest, only in cases in which judgment-debtors are public servants or persons of any social standing; but, before committing a judgment-debtor to a civil prison, I satisfy myself by a summary enquiry that his case falls within clauses (a) to (e) of order XXI, rule 40 (2). It is, I think, desirable that rule 40 should be amended so as to make it incumbent upon courts not to commit a judgment-debtor to jail unless they are satisfied of the existence of any of the matters specially referred to in rule 40 (2). The credit of the petty merchant or artificer and the agriculturist will not, I think, be affected by such an amendment. Rule 37 needs no amendment in my opinion, for it is necessary in the interests of the moneylenders and holders of money-decrees that the courts should be left to exercise their discretion in the matter of issuing a notice at the outset.

3. An amendment of the Provincial Insolvency Act, as suggested in paragraph 5 of the memorandum, is, I think, absolutely necessary.

4. I do not see any objection to the amendment of order XX, rule 11 (2), so as to make it conform to section 30 of the Presidency Small Cause Courts Act. The amendment is highly desirable, for courts often find themselves unable to do anything for judgment-debtors when their circumstances call for some relief being given to them without unduly inconveniencing the decree-holders.

5. I do not think the period of limitation for the execution of any decree should be restricted as suggested. A proper insolvency law would suffice to protect honest judgment-debtors.

## XVIII

*Letter*—from M.R.Ry. S. RANGANATHA MUDALIYAR Avargal, B.A., B.L., Subordinate Judge, Guntūr.

*Dated*—the 4th January 1915.

With reference to the demi-official, dated the 11th December 1914, in the matter of “Memorandum on imprisonment for debt,” I have the honour to submit the following :—

(1) Imprisonment for debt is, in my opinion, a relic of the barbarous notion of enslavement to the creditor. No harm will be done by its abolition altogether. Incarceration is an insult to the dignity of man. It deprives him of self-respect and attaches a stigma. His labour is lost to society and he cannot earn what would sustain him and his family. His enforced idleness deprives him also of the only means whereby he could repay the debt for which he is imprisoned.

(2) The only tangible result of imprisonment for crime is the exile of criminals from the community. It is an admitted failure as a preventive or corrective of crime. There is, therefore, no justification for the assumption that fear of arrest and imprisonment will deter or teach people from running into debt which they cannot repay. Imprisonment for indebtedness is literally an irony of fate and punishes the innocent for the guilty.

(3) Instead of placing restrictions in the way of insolvent petitioners by directing preliminary inquiries into their conduct and so forth, I would facilitate recourse to the beneficent protection offered by that law. There are sufficient safe-guards against fraudulent insolvency—conviction for sequestration of property, covinous transfers, preference and so on. Their alienations may also be set aside to a good extent and the assets made available for the creditors. I may, in this connection, point out that the summary remedy afforded by the Civil Procedure Code to inquire into claims is defective, in that it gives no power to set aside the transfer in certain instances in which the plenary powers of the insolvency court enable it to afford an adequate relief.

(4) The fees and charges at present levied—in my opinion against the spirit, if not the letter of the law—are a deterrent to insolvent applications except by those who profit by them. I would amend that law by allowing both creditor and debtor to apply without the limitations now existing. Summary powers should also be invested on the courts to punish as also to compensate for mischievous and false actions.

(5) The disuse into which rule 40 of order XXI has fallen is its best condemnation. Except in the rare cases in which an honest judgment-debtor is prevented from applying for insolvency, it is of no practical use. The rule does not take sufficient note of the practical difficulties before such an order consistent with justice to the decree-holder could be passed. Inquiry will have to precede release; and detention in jail or keeping in arrest does not answer the purpose for which its aid is invoked. Very rarely does a decree-holder continue to pay the jail-batta for the full period unless he has hopes of the judgment-debtor or his relatives coming forward to pay. The distinction between nob and snob is as well known here as elsewhere. The true origin of the general issue of notice to Government servants against whom applications are made for arrest is not any tender regard for them but the existence of rules forfeiting appointment on bankruptcy. An opportunity is offered to arrange with their creditors.

(6) I do not think that contumacy and fraud can be prevented by discrimination in arrest and imprisonment any more than the Money-lenders Act will prevent usury and speculative lending. Natural laws cannot be altered by halting and imperfect legislation intended for general application. Further risks would be protected by levy of further premiums. I concur in the opinion in paragraph (4) that the rate of interest is regulated by custom, not in the sense in which the word is understood by lawyers but in the sense understood in the trade. But it has to be remembered that India is a country where money is dear. The bank rate has, to my knowledge, gone up to 13 and 14 per cent. per annum and this tightness of money must affect the village sowcar because he has to draw his funds from his chief directly in touch with the world market. This stringency and unnatural fluctuation will never cease until the currency is naturalized. The artificial standard is responsible for the withdrawal of the Government 3 per cent. loan. The slow expansion of co-operative movements is due only partly to the novelty of such organizations. The sowcar has, for centuries, been the local and exchange banker in his own way and movement of goods cannot take place without his help. It would be too radical a reform and invading on powerful vested interests to suggest that Government should extend its money-order department into a banking institution. In such circumstances, the sowcar and high interest are inevitable.

(7) It is authoritatively stated that the cases of destitution caused by misfortune very considerably exceed those due to misconduct. Destitution is the necessary consequence of intermittent employment, sickness, old age and death of the earning member. The object of the law should be to protect the larger class of unfortunates and not to punish the other class who are, however, not less entitled to sympathetic consideration. The narrowing of the meshes for trapping the latter is a policy of doubtful worth. It will be well to consider how far the harshness of creditors has been the father of the subterfuges of debtors.

(8) The treatment of all debtors being uniform, punishment for fraudulent evasion should be distinct and drastic. The Insolvency Act is the embodiment of that principle and further progress should, in my opinion, be on the same lines rather than by discriminate arrest or imprisonment. In the latter case, a law of “judicial mercy” will have to be developed to regulate the whims of erratic judges. Moreover, interference before decree is preferable to placing difficulties in the way of its execution. There should be no discretion in the courts as to whether they would execute, and in what manner, the decrees made by proper tribunals.

The right of the decree-holder to choose his own remedy and time should be paramount. The reproach against the administration of justice in India, that the creditor's troubles begin with his decree, should be wiped out.

(9) The proposal contained in paragraph 6 (a) is quite a necessary reform and I would strongly support it. A little indifference and sometimes the promise of the creditor prevents application in time and afterwards the debtor finds himself too late.

(10) As to proposal (b) in paragraph 6, however, I think any curtailment will accentuate the evil proposed to be remedied. It will help the dishonest debtor effectually to defeat his creditor, while the honest debtor will be harassed by continued executions taken in feverish haste. Anyhow, the real sufferer will not be the professional harpy but the thrifty investor. Even when protection is afforded by the Insolvency Act, the debt is not excused for twelve years. It would lead to an extraordinary result if decrees lapse in three years. I would, on the other hand, suggest the abrogation of the twelve years' rule. A party can always apply for insolvency if he cannot pay his debt. It is generally a dead-letter in the case of the professional money-lender who never fails to obtain a renewal of the debt to which that rule cannot be extended.

(11) The main object of legislation should be to encourage credit by making it more profitable to the creditor to lend on easy terms and more difficult for the debtor to defraud a just debt. If the courts have full power to interfere with the contract rates of interest, the parties will rely more upon the promises made at borrowing than they do now. The creditor will not rush to court with a usurious bond nor venture to claim interest at the 'written' higher rate against the lower rate 'orally agreed upon.' This latter is a serious evil to which no relief is possible in the present state of the law under sections 91 and 92 of the Evidence Act. The only justification for the creditor is that he takes a lower rate out of court and enhances it when driven to legal remedies for realization. The idea is that costs awarded are not a sufficient compensation for the actual output and worry and time occupied, attended, as they are, with the prospect of indefinite delay and possible failure. Quicker disposal of claims by an adequate number of courts may mitigate this evil to some extent. So also, in the case of the debtor, he will not risk loss of credit by looking too much to the uncertainties of the law and interference of courts.

(12) The speculative trader is the best client of the exorbitant marwadi. The latter really partakes of the profits of speculation by lending on little or no security. The artisan, petty trader and agriculturist will never suffer in credit because they are generally for low interest and respect for their given word. The economical questions raised will adjust themselves without any violent struggle and there will be no shake to general credit. We have the example of the effect of the insolvency laws in the Presidency towns before us. They have not prevented money-lending.

## XIX

*Letter*—from L. G. MOORE, Esq., I.C.S., District Judge of Coimbatore.

*Dated*—the 14th January 1915.

With reference to your demi-official, dated 9th December 1914, I write to say that I called for reports (which I enclose) from the Sub-Judge, Coimbatore (Mr. D. Venkoba Rao), and the Principal District Munsif, Coimbatore (Mr. Sundaram Chetti), who are both judicial officers of experience on the points referred to in your memorandum.

I am substantially in agreement with the views expressed by Mr. Sundaram Chetti and do not feel that I can usefully add much to what he has written.

2. The points raised in your memorandum are—

I. (a) whether a measure should be introduced or order XXI, rule 40, Civil Procedure Code, be amended so as to place some restriction on imprisonment in the execution of money-decrees, in such a way as to relieve really indigent debtors from the risk of imprisonment in civil jail?

(b) whether such a measure would affect the credit of (i) the petty merchant or artificer and (ii) the agriculturist?

II. Whether there are any objections to amending rule 11 (2) of order XX, Civil Procedure Code, into conformity with the law applicable to Small Cause Court, Madras, enabling the courts, after passing the decree, to order that payment of the amount decreed shall be postponed or made by instalments?

III. Whether the period of limitation prescribed by section 48, Civil Procedure Code, for the execution of decrees—twelve years—cannot be reduced to three years in the case of money-decrees of less than a certain amount?

3. *Point No. I.*—There appears, I think, to be no doubt that the civil courts do not usually have recourse to the provisions embodied in rules 37 and 40 of order XXI, Civil Procedure Code, and that they are, in fact, as you say, a dead-letter.

The reasons are not far to seek. As pointed out by the Sub-Judge, if a notice under rule 37 of order XXI, Civil Procedure Code, were to be invariably issued in all cases, judgment-debtors would, as a general rule, abscond. Even as the law stands at present, it is well known that many dishonest judgment-debtors manage, with the connivance of the Process establishment which is unfortunately in most districts corrupt, to evade arrest for long periods.

The reason for the omission on the part of judgment-debtors to take advantage of the provision of rule 40 doubtless is that an indigent judgment-debtor finds it impossible to furnish security to the satisfaction of the court.

Again, under order XXI, rule 40 (4), the judgment-debtor only secures temporary immunity from arrest, whereas if he expresses his intention under section 55 (4), Civil Procedure Code, of applying to be declared an insolvent, the court is bound to release him from arrest, if he furnishes security for his reappearance.

On the whole, therefore, I am in favour of rule 40 being modified so as to give the court the power to release a judgment-debtor without his being required to furnish security, provided he satisfies the court that he is unable from poverty or any other cause to pay the amount of the decree and has not been guilty of fraud. I entirely agree, however, with the District Munsif for the reasons given by him that the onus of proving this should be on the judgment-debtor, and that it should not be necessary for the creditor (as is the case in England) to prove that the debtor has been guilty of contumacy or fraud or is not really indigent and has the means to pay before an order of arrest or imprisonment is made.

I do not think that there is any reason to suppose that the modification of rule 40 suggested would affect sound loan transactions. What is really required is the passing of a "Money-lenders Act" enabling courts to reduce the rate of interest charged. The usual rate of interest charged in this district by Nattukottai Chettis is 36 per cent. per annum.

4. I am not in favour of the proposal made by the Sub-Judge that the decree-holder should be required to proceed first against the property of the judgment-debtor. This would result in great delay in the execution of decrees.

The attachment and sale of moveable properties is a long and troublesome business. My experience has been that the issue of a warrant of arrest has, in many cases, a most salutary effect, and I have known of several instances where a contumacious judgment-debtor, who was able to pay, did so, as soon as he heard that a warrant had been applied for.

5. *Point No. II.*—I am strongly in favour of the proposal that order XX, rule 11 (2), Civil Procedure Code, should be amended so as to give courts power to order *suo motu* and irrespective of the consent of the decree-holder, postponement of the payment of the decree amount or payment by instalments.

6. *Point No. III.*—The period of limitation prescribed by section 48, Civil Procedure Code, for the execution of decrees, might well be reduced to three years in all cases of money-decrees (say) for Rs. 200 or less, and to six years in all other cases.

7. With reference to paragraph 5 of your memorandum, I am of opinion that sections 14 and 15 of the Provincial Insolvency Act should be amended so as to give the court the power to reject insolvency petitions on the ground of fraudulent conduct.

The Calcutta, Allahabad and Madras High Courts are agreed in holding that the words "or for other sufficient cause" in section 15 (1) of the Act mean "cause to be shown by the judgment-debtor."

The result is that however fraudulent the debtor's conduct may have been, the court has no alternative but to adjudge him an insolvent. In fact, the High Courts have held that the intention of the legislature apparently was to make it as easy as possible for a person to obtain an adjudication order, and that the question whether the judgment-debtor has been guilty of fraud or bad faith need not be gone into until he applies for a final order of discharge.

So far as my experience goes, I do not think that the fees at present charged in Insolvency Proceedings are too high and act as a deterrent. The number of insolvency applications filed in this district is comparatively large.

## XX

*Letter*—from M.R.Ry. D. VENKOBIA RAO Avargal, B.A., B.L., Subordinate Judge, Coimbatore.

*Dated*—the 5th January 1915.

With reference to your official memorandum No. 11193, dated 11th September 1914, forwarding for opinion Mr. A. J. Curgenven's memorandum on imprisonment for civil debt, I have the honour to state as follows.

Execution against both person and property simultaneously is applied for rarely by decree-holders and granted only under special circumstances.

2. Notice of warrant of arrest under order XXI, rule 37, is issued generally only in cases where the judgment-debtor is a public servant or a man of some social standing. I consider it is not desirable to issue such notice in all cases, because in a majority of cases judgment-debtors will make use of it only to abscond and evade arrest.

3. A judgment-debtor brought under arrest does not generally court inquiry under order XXI, rule 40, Civil Procedure Code, but when he wishes to oppose the arrest, expresses, under section 55 (4), Civil Procedure Code, his intention to apply to be declared an insolvent. He prefers the latter course apparently because by an inquiry under order XXI, rule 40, he can secure only temporary release with liability to re-arrest, whereas by adjudication under the Insolvency Law, he can save the expenses of an inquiry under rule 40 and also obtain immunity from arrest not only as regards the particular debt for which he is arrested but also in respect of all his debts. Anyway, I think an indigent judgment-debtor who is not guilty of fraud should not be sent to jail as a matter of course and I consider that the decree-holder must be made to exhaust the property of his judgment-debtor before proceeding against his person, and *that* only in cases of contumacy and fraud. Such restriction would, I think, only put an end to loans to men of little or no substance made in a speculative manner and would not interfere with a good system of credit.

4. I consider it desirable to amend, as proposed in paragraph 5 of the memorandum, sections 14 and 15 of the Provincial Insolvency Act III of 1907.

5. It is also desirable to amend order XX, rule 11 (2), Civil Procedure Code, so as to give courts express power after decree to order without consent of decree-holder postponement of the payment of the decree amount or payment thereof by instalments.

6. The period of limitation prescribed in section 48, Civil Procedure Code, may, in my opinion, be reduced to three years where the amount does not exceed Rs. 100 and to six years where it does not exceed Rs. 1,000. Where a larger amount is involved, I think the period of twelve years should be allowed, as it generally requires a long time to recover large amounts.

## XXI

*Letter*—from M.R.Ry. K. SUNDARAM CHETTI Garu, B.A., B.L., Principal District Munsif, Coimbatore.

*Dated*—the 21st December 1914.

With reference to the official memorandum of the District Court D. No. 11194, dated 11th December 1914, calling for my opinion on the printed memorandum as regards imprisonment for debt, I have the honour to state as follows.

2. The gist of the memorandum is a recommendation to place some restriction on imprisonment in the execution of money-decrees, in such a way as to relieve really indigent debtors from the risk of imprisonment in civil jail. As the law stands at present, the decree-holder has *prima facie* a right to apply for a warrant and get an order for arrest, and the judgment-debtor brought under arrest can be released, only if the requirements of section 55 or rule 40 of order XXI, Civil Procedure Code, are complied with, unless the decree-holder himself consents to the release of the debtor or chooses not to pay the jail-batta. Security for the debtor's appearance in court, when ordered to appear, has to be furnished by him, in order to get himself released. Some difficulty is no doubt felt by the really indigent debtor in furnishing security. But it must be observed that in the majority of cases the decree-holder does not insist on the debtor being sent to jail, though no application is made under section 55 or rule 40 of order XXI, Civil Procedure Code, if the debtor is really a pauper, and it is believed that there is no hope of recovering any amount even by imprisoning him. In such cases, the decree-holder states it is only a waste of money to pay the subsistence allowances and other fees, and therefore consents to the release of the debtor.

3. Any measure to relieve a really indigent debtor from the risk of imprisonment would be a salutary one. The provisions of section 55 and rule 40 of order XXI, Civil Procedure Code, and especially those of rule 40, if frequently availed of by the debtor, will be an adequate check against sending real paupers to jail. It is not easy to find out the causes for the debtor's omission to resort to rule 40 in very many cases. Probably if the rule as to furnishing security for his appearance is modified, and more facilities are provided for the indigent debtor to avail himself of the benefit of that rule, applications may be made thereunder more frequently.

4. If the existing provisions of rule 40, order XXI, are availed of more frequently, and more facilities are given to debtors for resorting to the remedy provided by that rule, I think the anomaly of imprisoning a man on the mere ground that he is a judgment-debtor may, to a considerable extent, be removed.

5. In introducing restrictions on imprisonment in the execution of money-decrees, I am of opinion that the onus of showing that the debtor is unable from poverty or other sufficient cause to pay the debt, should be placed on him and the decree-holder should only be allowed an opportunity to rebut any evidence adduced by the debtor. That is the spirit of rule 40, order XXI. But if, as a rule, the onus is thrown on the decree-holder, and in every case he is required to prove that the debtor is not a pauper, and is a cheat, before granting an order for arrest, or imprisonment, I am afraid it would affect the operations of money-lenders to a material extent. Even those who lend under a sound system of credit will be handicapped in the execution of decrees, and the measure intended to discourage speculative money-lenders of no good repute will affect even the money-dealings carried on a sound system of credit. Considering the difficulties staring against them in the execution of decrees, they may cease to lend to a large class of persons, in whose category come the petty merchant or artificer and the agriculturist, who do not find it convenient to borrow on the security of moveables or immovables, but want loans on their personal credit. Even sound loan transactions may be dwindled owing to the apprehension created in the minds of even honest money-lenders. The result would be that persons who are really in need of loans, but are not in a position to pledge or mortgage their property, though they are able to repay the loans, will find themselves in a deadlock. If in every case the decree-holder should first prove that the debtor is guilty of contumacy or fraud, and is not an indigent debtor, in order to obtain an order for arrest, the work of courts in the execution branch is sure to attain unmanageable proportions. The statistics showing the number of execution petitions for the arrest of judgment-debtors will indicate what the magnitude of work will then be.

6. In my humble opinion rule 40 of order XXI may be modified in a suitable way, affording greater facilities for really indigent debtors, to seek the protection afforded by that rule. It is not desirable to introduce a measure, so as to throw the burden of showing that the debtor is not a pauper, but a cheat or a contumacious man, on the decree-holder as a rule, in order to obtain an order for arrest or imprisonment in the execution of the decree.

7. As for the second point, I am of opinion that it is highly necessary to modify order XX, rule 11 (2), so as to give a discretionary power to the court, to allow time to the debtor for the payment of the decree-amount, or to order the payment of the same by instalments, irrespective of the consent of the decree-holder. The absence of some such provision works a great hardship even on the debtors who deserve such a concession and who are put to suffering and are also oppressed by some unscrupulous decree-holders.

8. In respect of the third point, I think the period of limitation in the case of money-decrees of Rs. 200 or less may be reduced to six years. Such a measure will make the decree-holders more prompt in the realization of their debts and curtail the period of suspense in which the debtors are now.

## XXII

*Letter*—from D. G. WALLER, ESQ., I.C.S., District Judge, Tinnevely.

*Dated*—the 13th January 1915.

With reference to your demi-official, dated 8th December 1914, I have the honour to send herewith copies of reports received by me on the subject of your letter from the Subordinate Judge of Tinnevely and the District Munsif of Tinnevely. I agree generally with their views and have little to add to them.

2. The provisions of rule 40 of order 21, Civil Procedure Code, are, in practice, rarely resorted to. The reasons are obvious. A court, which as a rule with difficulty keeps pace with its ordinary trial and execution work, is naturally reluctant to undertake *suo motu* what would certainly be a complicated and probably be an inconclusive enquiry into the circumstances of the debtor. Nor is it necessary for it to do so. So far as it is concerned, the case of a really indigent debtor is adequately provided for by section 55 (3), Civil Procedure Code. If the debtor does not see fit to take advantage of this provision of the law and makes no motion under rule 40, there is no reason why the court should not proceed to commit him to jail. And if motions under rule 40 are rare, it is, I imagine, because decree-holders are not so ill-advised as to throw good money after bad by imprisoning debtors whom they know to be indigent. For the most part probably they pursue those whom they know to be in possession of concealed resources. It would add enormously and, I think, quite unnecessarily to the work of courts, to impose on them the burden of deciding in every case whether the debtor has or has not such resources.

I am, of course, aware that there are cases in which arrest and imprisonment are used in order to put the screw on relatives and friends of the debtors, but I doubt whether they are sufficiently common to justify the making of an enquiry under rule 40 compulsory in every case. On the whole, I deprecate anything that would throw additional difficulties in the way of the creditor. Action in this direction may be called for in other parts of the country, but here it seems to me that the creditor requires protection rather than the debtor. I am not satisfied that the present procedure of the courts encourages reckless borrowing or lending. On the other hand, if realisation be made more difficult, credit is bound to be withdrawn and the rate of interest will certainly increase. No doubt, it is proposed to allow courts to go behind transactions and regulate the rate of interest charged, but I am by no means convinced that the desired object will be achieved by legislation of the kind contemplated. The net result will probably be that consideration will not pass for the whole amount recited and that the additional task will be imposed on courts of deciding in every case what the real amount of the loan was. At present, affairs of this kind settle themselves fairly satisfactorily. The lender charges and gets a decree for a high rate of interest, but realises only a percentage of what he can claim under his decree. So far as my enquiries go, it is exceptional for him to realise his dues in full.

3. I do not support the proposal to reduce the period of limitation for the execution of money-decrees. The proposal made in paragraph VI (a) of your Memorandum is unobjectionable.

4. I am strongly opposed to any change in the scheme and policy of the insolvency law. Its critics appear to overlook the fact that, while restraining the dishonest debtor and his associates, it affords protection to the genuine creditor. What happens when a man is in embarrassed circumstances is notorious. He transfers what remains of his property to relatives or makes preferential payments in favour of certain of his creditors, who either are related to him or have influence with him. He then puts in an Insolvency petition or has one presented against him. If his *bona fides* is to be called in question before an order of adjudication is passed, a very considerable burden will be imposed on the District Court in the case of creditor-petitions and a large body of unremunerative work will be thrown on the Official Receiver in that of debtor-petitions. That officer depends for his remuneration mainly on his commission and he will receive none where, after an elaborate enquiry, he declines to pass an order of adjudication. And when, after this enquiry, adjudication has been refused, what, it may be asked, will have been the benefit to any one? To my mind, the answer is clear—none whatever. If the insolvent is found guilty of *mala fides* and the petition is rejected, the parties are left exactly as they were. The fraudulent transfers and preferences remain unaffected and the honest and genuine creditors have no resource but to file suits at their own charge to set aside the transaction. This is an arduous, uncertain and expensive process which the average creditor hesitates to adopt. Even where, after a term of years, he is successful, he cannot hope to recoup more than a fraction of his expenditure.

Under the Insolvency Act, a more effective and speedy remedy is open to him. An order of adjudication follows as a matter of course on the petition and the debtor's transactions are enquired into by the Receiver. The latter collects evidence and reports the debtor's fraudulent

transfers and preferences to the court for cancellation under sections 36 and 37 of the Act. If the court decides to set them aside, it does so by a comparatively summary process, at the expense of the estate and for the benefit of the whole body of creditors. This is surely far better than leaving the latter to the difficulty, expense and delay of filing separate suits and executing separate decrees. Action taken by the Receiver on behalf of the whole body of creditors is not merely enormously cheaper, but is likely to be far more effective than the ordinary process of litigation and execution. In the result, the genuine creditors are protected and the fraudulent insolvent's discharge is suspended. The fact that the order of adjudication saves the insolvent from imprisonment is a merely temporary advantage. If he is *bona fide* insolvent, it is one to which he is entitled. If he is not, he is otherwise sufficiently punished by the suspension of his discharge and the setting aside of his fraudulent transfers and preferences. No doubt, insolvency courts are at present most frequently resorted to by fraudulent debtors, but I see no reason to suppose that others are deterred by the fees charged.

#### XXIII

*Letter*—from M.R.Ry. A. N. ANANTARAMA AYYAR Avargal, B.A., B.L., Subordinate Judge of Tinnevely.

*Dated*—the 14th December 1914.

With reference to the District Court's Dis. No. 5772, dated 11th December 1914, forwarding a Memorandum on imprisonment for debt and asking me to submit my views thereon, I have the honour to state as follows :—

I think that the suggestions contained in paragraph 6 of the Memorandum may be acted upon. There is no objection to these suggestions. I think that sections 14 and 15 of Act III of 1907 may be amended so as to give power to courts to reject petitions on the ground of fraudulent conduct. There is no objection to this also. I do not approve of any new restriction being placed on imprisonment as suggested in paragraph 2 of the Memorandum. Rule 40, order XXI, Civil Procedure Code, gives ample protection to indigent debtors who do not wish to go to the insolvent court. Very few applications are made under this section. In my opinion there is not much speculative lending. There are, I think, more dishonest debtors than speculative lenders. Any restriction on imprisonment would, I think, make money more dear to the petty merchant, artisan and agriculturist. In the matter of investigating claims to moveable and immoveable property the work of courts would increase. I do not think that restriction on imprisonment would decrease litigation as stated in paragraph 3 of the Memorandum.

#### XXIV

*Letter*—from M.R.Ry. R. NARASIMHA AYYANGAR Avargal, B.A., B.L., District Munsif, Tinnevely.

*Dated*—the 11th January 1915.

With reference to the endorsement of the District Court D. No. 5771, dated 11th December 1914, enclosing "Memorandum on imprisonment for debt," I have the honour to submit as follows :—

(2) The memorandum under reply deals in the main with three points : (1) to restrict imprisonment for non-payment of debt to cases of fraud and contumacy, (2) to amend order XX, rule 11 (2) so as to enable the court, after the passing of the decree, to order payment of the amount by instalments even without the consent of the decree-holder and thirdly to reduce the period of limitation provided in section 48 of the Civil Procedure Code to three years, in respect of money decrees below a certain value.

(3) As regards the second of the above suggestions, it was expected that the legislature would, during the course of the amendment of the Civil Procedure Code in 1908, alter the law so as to invest the court with powers now proposed. There is no principle which would be violated by the adoption of the proposed suggestion. On the other hand it will place in the hands of the court power to deal with hard cases and mitigate the rigour of the law.

(4) Next, as regards the last suggestion about the reduction of the period of limitation, I think it is one which would provoke—and reasonably so—a large volume of criticism. As it is, a proportion of the money-decrees remains unrealised even within the twelve years period now obtaining, and the reduction, I am sure, will visit the creditors with irreparable loss. To dodge a creditor for a period of about three years is not difficult as we see it practised every day.

(5) There is another aspect of the case which would require attention. Owing to their being a long period of time during which the decree will be current, in a fair number of cases decrees are not prosecuted with rigour to oblige the debtor who brings all sorts of influence to bear upon the creditor with a view to stay proceedings. That advantage which the debtor has under the present law will be forfeited to him if the proposed suggestion is to be carried out. The net result will be that dishonest and fraudulent debtors will go off scot-free after a short period, while honest but poor debtors will be put to much harassment.

(6) Next, as regards the main question about the restriction of imprisonment to certain cases, the law at present stands thus :—When a judgment-debtor, who is arrested in execution of a decree, is brought before the court, the court shall inform him that he may apply to be declared an insolvent and that he will be discharged if he has not committed any act of bad faith, etc. (section 55, Civil Procedure Code). Also, where it appears to the court that a judgment-debtor brought before it under arrest in execution of a money-decree is unable from poverty or other sufficient cause to pay the amount, the court may direct his release, if it is found that he is not guilty of certain acts

of bad faith, etc. (see order XXI, rule 40). The wording of order XXI, rule 40, does not make it obligatory on the court, even without a prayer to do so, to hold the enquiry just as it is obligatory on it to inform the judgment-debtor that he may apply to be declared an insolvent. It is because the debtors do not apply for enquiry of the kind contemplated by rule 40, it is not generally made. An enquiry of the kind should be full and thorough ; if it is to be conducted in all cases even without the application of the debtors, as is suggested, that would immensely add to the work of the court and possibly special execution courts will have to be established ; for there will be an attempt by every debtor to obtain a release ; and there will be appeals from orders under that rule. It would not be strictly correct to say that the court soullessly and automatically sends every judgment-debtor brought before it to jail. It does discriminate. Even the decree-holders do not insist that the judgment-debtors should be sent to jail, except in cases of contumacy on the part of the judgment-debtor. The decree-holder will be out of pocket by Rs. 6 or 7 per mensem by keeping his debtor in jail, and why would he throw away good money after bad. If, as is observed in the memorandum, the holding of an enquiry under the provisions of rule 40 would result in bringing the Indian Law into line with the English Law, the statute already provides for such an enquiry in case the debtor needs it and any honest debtor, who is anxious to release himself, may avail himself of its provisions. I think to call upon the court in all cases to make an enquiry into the circumstances of the debtor, whether he chooses to ask for it or not, would be needless and serve no useful purpose. Beyond throwing additional burden on the court, I do not think the adherence to the provision of rule 40 in all cases would cause any appreciable change in the money transactions of the country ; for, as I have said, the enquiry under that rule is available to any judgment-debtor who asks for it.

(7) If it is intended to further restrict imprisonment or put the onus as to fraud or contumacy on the decree-holder, I would submit that the conditions of the country are not such as to call for a change in that direction.

(8) The preponderant motives which actuate a creditor to take out a warrant of arrest against his debtor may be brought under four broad heads, through the division attempted is not exclusive. It may be (1) to disgrace a debtor ; or (2) as a prompt means of realising the amount ; (3) it may be because there is no other go as the debtor has no property at all or no property which is apparent to attach ; or (4) because the debtor has secreted his property with others, to proceed against which would entail on the creditor grievous and expensive litigation and of the success in which he cannot be sure. In many cases more than one of the reasons given may co-exist. Generally, in the first of the cases abovementioned the debtor will have some property and he promptly pays up the amount as soon as he is arrested. In the second of the above cases, the creditor does not want to take the devious course of attaching and bringing to sale the properties of the debtor which is likely to cause delay and expense. The creditor's object is that the debtor himself should try to raise the money by disposing of the property or by otherwise raising money and discharge the debt. This is the motive which actuates creditors in the majority of cases. As regards the fourth class of cases the creditor, though he might know that the debtor is possessed of property, is unable to attach it because by many involved processes it has been secreted in the name of some relation or friend which it would be difficult for him to touch and even if he is able to get at it, it could be after litigation which would be so expensive as to be out of all proportion to the amount at stake. It is only an influential or well-to-do creditor that will brave the step of attaching the properties secreted in the name of others.

(9) It is the third class of cases which requires examination in view of the question raised by the memorandum under reference. As I have said, an honest debtor has, under the present code, sufficient protection, without the indignity of having to present a petition to be declared an insolvent. I cannot imagine that reckless borrowing can ever be stopped by legislation. If, in a few cases, the creditor loses his money that will be an object-lesson for him to be more careful in the future. It is observed in the memorandum that persons not legally or even morally liable for the debt, as the friends or relations of the debtor, are constrained to pay the debt in order to save the debtor from jail. The friends and relations may well, instead of paying, advise the debtor to prefer an application under rule 40, themselves standing surety during the pendency of the enquiry. Even in cases of absence of contumacy or fraud on the part of the debtor there must be an investigation into the matter and the debtor could be released pending enquiry only on furnishing security. As regards the second of the evil effects mentioned in the memorandum, viz., the debtor is compelled to borrow anew on more usurious terms, the recourse by the debtor to the provisions of rule 40 will act as a sufficient check on the proclivities of speculative lenders and they can be left to themselves to work out their fate. The Money Lenders Act now under contemplation will act as a sufficient and salutary check upon the mischief of this class of money-lenders.

(10) I would submit that any further restriction on imprisonment would cripple credit and make capital shy. The credit of petty merchants and agriculturists would, in my view, certainly suffer.

## XXV

*Letter*—from M.R.Ry. Diwan Bahadur V. SUBRAHMANYAM PANTULU Garu,  
District Judge, Cuddapah.

*Dated*—the 15th January 1915.

With reference to your demi-official, dated 8th December 1914, regarding imprisonment for debt, I think that, as the law stands at present, while a really indigent debtor could obtain ready relief under the Debtors Act, 1888, provided he is honest in his dealings without incurring heavy expenses by way of court costs, a debtor who has any properties to be given away to his

creditors to be realized and divided by them rateably has ample protection under the provisions of the Insolvency Act, if he is ready and willing to place his property in possession of the court for realization and distribution.

2. I do not think that any further restriction on the power of the creditor to arrest and imprison the debtor is needed; and if made, I fear that it might act rather prejudicially on the credit of the petty merchant, artificer and agriculturist.

3. I am unable to understand how the Debtors Act could be said to be a dead letter, and I do not know why it should be so, for, if the application made by an indigent debtor under the Debtors Act be summarily dismissed by a Munsif or Judge without proper enquiry, the order being appealable might very well be set aside in appeal and further enquiry be directed.

4. Within my experience as a Judicial Officer for the last 26 years, I have always allowed opportunities to a debtor in difficulties to prove his poverty or other circumstances on account of which he was not able to pay his debt just then, and when I was satisfied on the matter from the evidence adduced by the debtor, I always disallowed the application for arrest and imprisonment or directed the release of the debtor, as the case may be, as provided for by clause 1 of section 337-A of the Code of 1882 (now order XXI, rule 40 of the Code of Civil Procedure, 1908).

5. In this connection I may however say that I think that clause 1 of section 337-A requires a slight amendment by which the court might be authorized to pass, on the result of such enquiry, not only an order disallowing the application for arrest or imprisonment of the debtor, or directing his release; but also to make any other order deferring the application to arrest and imprison the debtor to a specified date within which the debtor might, in the opinion of the court, be in a position to make arrangements to discharge his debt, after taking security from the debtor, if necessary, to appear before the court when called for in the meantime.

6. I am of opinion that to place further restrictions on the powers of the creditor to arrest and imprison the debtor would result in creditors generally declining to lend money except on security of immoveable property or pledge of moveables, which a petty merchant or artificer or agriculturist scarcely possesses.

7. While the fact that *prima facie* one is liable to be arrested and sent to jail unless he could bring his case under the provisions of the Debtors Act or the Insolvency Act to the satisfaction of the court concerned always acts as a sort of deterrent on the debtor from being dishonest or careless in his dealings, on the other hand, the removal of that fear may, I think, prejudicially incline many a debtor to play tricks with their property; and it is especially so in this country where *benami* transactions are in a way recognized by law and the general tendency of people is to convert their savings rather unduly into one's wife's jewels in a manner that after one has successfully defrauded one's creditors, one might rely on the said property and lead a comfortable life.

8. It is not always easy for a creditor to prove the real nature of the said transaction to the satisfaction of the court if the onus of doing so is thrown upon the creditor; and I think it is but just that the onus in all such cases should be thrown on the debtor; and that, in my view, is the effect of the law as it stands at present.

9. This is also the view which the District Munsif of Cuddapah (Mr. T. M. Venkataraghava Chariyar, B.A., B.L., District Munsif, 3rd grade) takes in respect of both petty merchants and artificers as well as petty agriculturists, while the District Munsif of Proddattur (Mr. M. Venkataramayya, B.A., B.L., Acting District Munsif, 4th grade) thinks that it would be so only in respect of petty artificers and merchants, though not necessarily in respect of agriculturists.

10. Then as regards the proposal to empower courts to grant instalments after the decree has been passed without the consent of the decree-holder, I think the law may be so amended, but the order should be appealable; and all the District Munsifs in my district\* also think so;

\* 1. Mr. T. Bhujanga Rao, M.A., B.L. (Ag. second grade District Munsif, Gooty).

2. Mr. A. S. Veeraswami Ayyar, B.A., B.L. (Ag. fourth grade District Munsif, Nandalur).

3. Mr. T. M. Venkataraghava Chariyar B.A., B.L. (third grade District Munsif, Cuddapah).

4. Mr. M. Venkataramayya, B.A., B.L. (Ag. fourth grade District Munsif, Proddattur).

while as regards shortening the time allowed to recover small debts, I think three years is too small a period for the purpose and it may, with advantage, be reduced to six years.

11. It may be mentioned in this connection that the period at present allowed by law to recover the debts due under decrees passed by village munsifs whose jurisdiction is up to Rs. 20 is three years (*vide* article 181 of the Limitation Act 1908) and the limitation for larger sums may therefore be conveniently fixed at six years, say up to Rs. 200, up to which a Munsif in this Presidency could exercise small cause powers.

## XXVI

Letter—from M.R.Ry. Diwan Bahadur C. KRISHNAN Avargal, M.A., Bar-at-Law, Chief Judge of the Small Cause Court, Madras.

Dated—the 15th January 1915.

I have read with great interest the able Memorandum of Mr. Curgenvin "on imprisonment for debt" and I give as desired the following as my opinion on the points raised, which will be taken as a tentative one as specially referring to my court, viz., the Presidency Small Cause Court:—

I agree that imprisonment for debt should be restricted to cases of "contumacy and fraud" and that it should not be allowed to be used by a creditor to punish his debtor. It will, no doubt,

follow from this that a judgment-debtor who is honestly unable to pay his decree debt from poverty or other sufficient cause should be released from arrest and not committed to jail. As pointed out by the special officer order XXI, rule 40, has already provided for this position in the ordinary courts; the corresponding rule in my court is order XXI, rule 27 of the Presidency Small Cause Court rules. This rule is not altogether a "dead letter" as the special officer says; though it may be conceded that it is not used to any large extent. This is because applications have not been made by parties to any large extent under that rule. Whenever an application is made under the rule the court does make an enquiry, as it is bound to do, and passes orders. It cannot be expected that the court should make an enquiry of its own motion into the circumstances of every decree debtor to ascertain whether he is a pauper or not where no allegations are made to that effect by the debtor himself. In most cases an enquiry by the court *suo motu* will be a waste of time. The party wishing to avail himself of the rule should allege and prove the facts necessary for it. The chief reason why parties do not generally apply under the rule in my court is, I imagine, because they are able to get easy instalments, in all reasonable cases. Where small instalments are fixed commensurate with the debtors' income and property as is done in a large number of cases in my court is not easy for any debtor to show that he is really too indigent even to pay such instalments. The rules, as they exist at present, in my court seem to me to be quite wide enough to prevent really indigent debtors being imprisoned. If any such gets into jail, it is altogether due to his own fault in not putting forth his case to the court and proving it, either through ignorance or for any other such reason. To help such parties effectively the only remedy will be to abolish imprisonment for debt altogether as was done in the case of women. But the Special Officer does not propose this; to do it, would no doubt deprive creditors of a very efficacious and speedy means of realizing their debts and would tend to render many decrees futile and the work of execution in a court like mine with nearly 20,000 suits a year difficult and congested; it would also probably help the fraudulent debtor more than the honest and poor one. I need not consider whether taking all the *pros* and *cons* the total abolition of imprisonment is desirable as it is not proposed.

I regret I am not able to see clearly from the memorandum under consideration what exact change in the rules, is proposed to further "restrict imprisonment to cases of fraud and contumacy." It seems to me, the present rules themselves are in the main reasonably sufficient for the purpose if only the debtors concerned will make the necessary appeal to the court; especially when taken in conjunction with the insolvency law in force both in the city and the mufassal.

To help the ignorant pauper debtor if it is proposed that the rule as to imprisonment be so modified that the court should issue warrant of arrest only in case a creditor proves to the satisfaction of the court that the debtor against whom such warrant is applied for is guilty of fraud or of contumacy inasmuch as though he had the means to pay he had failed to pay, I am not in favour of this change; after all, the indigent debtors who are unable to pay even the small instalments ordered are very few in number. To help the ignorant among these, who will be still fewer, the proposal will necessitate proof being given by the creditor in *every* case where warrant of arrest is applied for that the debtor is able to pay. It will increase the work in execution of decrees in the majority of cases unnecessarily, the benefit resulting therefrom to the few ignorant paupers being quite incommensurate with the labour involved. For courts governed by the Civil Procedure Code the remedy is to authorize them to grant instalments to judgment-debtors in all cases where on facts proved before the court such an order is deemed proper quite independent of the consent of the decree-holder. That is the rule in my court—see section 30 of Act XV of 1882 and order XX, rule 10 of the rules of the Presidency Small Cause Court now in force. This rule gives relief to debtors who are too poor to pay the decree amount at once and my experience shows it works satisfactorily. There is no good reason why this should not be made the rule in all courts. If this rule is passed I think it is hardly necessary to pass any rule further restricting imprisonment.

As to the question whether notice should be given in all cases to judgment-debtors before the warrant of arrest is issued I am against it. The rule as to notice as it now exists is sufficient. The court has a discretion to issue notice in the first instance if it so thinks fit. In many cases previous notice may enable the debtor to abscond and defeat the contemplated execution if notice is made compulsory in all cases.

I would suggest that powers may be given to courts when passing decrees to declare in any particular case that that decree be not executed by warrant of arrest but only against property if it is satisfied that the ends of justice require such an order. As an illustration the case of a man drawing a salary of Rs. 20 or less may be taken; though the legislature has saved such pay from attachment as the amount is considered to be necessary for a man's maintenance, if the man is to be arrested in execution he can indirectly be made to pay the decree debt from out of this very salary and thus defeat the beneficent provision of law. In such cases the decree may well be declared unexecutable against the debtor's person from the very first, without ordering instalments at least so long as the debtor's circumstances don't change.

The question as to the change necessary in the Insolvency procedure as dealt with in paragraph 5 of the memorandum should be considered.

On the question of Limitation of twelve years as prescribed by section 48, Civil Procedure Code, I would like to point out that that rule of limitation does not apply to my court, with the result that decrees may be indefinitely kept alive provided Article 182 of the Limitation Act IX of 1908 is complied with. I think this should not be the case; there should be a rule like the one in section 48, Civil Procedure Code, applicable to my court as well.

I am, however, inclined to think that, if power is to be given to all courts to grant instalments irrespective of the decree-holder's wishes, the total period of limitation as prescribed by section 48 should not be curtailed except in decrees of small amounts. Otherwise it will render the giving of easy instalments unfair in many cases to the decree-holder. I think the suggestion of Rao Bahadur C. Krishnaswami Rao that the three years' period should be confined to debts of Rs. 50 and less is reasonable. For debts below Rs. 500 a period of six years may be fixed and the twelve years' period retained for the rest.

## XXVII

*Letter*—from Sir V. C. DESIKA ACHARIYAR, B.A., B.L., Second Judge, Small Cause Court Madras.

*Dated*—the 18th January 1915..

As between a creditor and a debtor the latter commands almost universal sympathy, because the general belief is that, but for the creditors offering to lend, a debtor could and would never borrow. Though the prices of most articles of consumption have within the last thirty years risen by 100 per cent., and in some cases by 150 per cent. even, yet the wages of domestic servants and other menials have risen by only 30 to 50 per cent. So far as the city of Madras is concerned it is these ill-paid domestic servants and other menials that borrow ordinarily at rates of 75 per cent. and 150 per cent. interest, *i.e.*, at one anna and at two annas interest, per rupee, per month. These people have no credit and the ordinary money-lenders (including *nidhis* and provident funds) won't even look at them. Their masters don't generally give them advances for meeting extraordinary expenses, as in the case of illness of a member of their family, or to meet marriage or funeral expenses. So they are forced to go to these sharks who lend at ruinous rates. Often-times I have found these sharks are not capitalists themselves. They borrow from others at 18 per cent. and 24 per cent. and lend at 75 per cent. and 150 per cent. During the last nine years something like two to three thousands of such cases came up before me and I can say in not more than thirty to forty cases I had to send a debtor to gaol. In all other cases easy monthly instalments from As. 4 to Re. 1 were ordered, and without much difficulty the debtors were paying back their debts. To do away with imprisonment for non-payment of debt altogether would seriously handicap the very large class of domestic servants and menials in getting these small loans for urgent purposes, even at exorbitant rates of interest. If only the Judges who have to issue orders in execution of decrees keep their eyes and ears open and exercise some discretion, I should think the hardship would be very much minimised. In Madras the Judges of the Small Causes Court seldom send a debtor to gaol so long as he is willing to pay a small amount, monthly, towards the debt. No doubt in the mufassal the District Munsifs and the Sub-Judges have no time to hold an enquiry in each case; and orders for arrest are issued, probably, more frequently. Cases of contumacy and fraud are more often detected by a close examination of the debtor himself, and to get at him—except by a warrant of arrest—is next to impossible. The creditor finds it, in most cases, very difficult to prove fraud or contumacy by other evidence. In some cases where notice is issued to show cause why a debtor should not be committed to gaol, the debtor seldom appears, but taking advantage of the notice makes himself scarce. But in the case of public servants and others employed on monthly salaries a notice invariably goes for showing cause before a warrant of arrest is issued. The wholesome provision about a debtor being permitted to pay a decree debt by instalments, even without the consent of the decree-holder, may well be extended to mufassal courts by an amendment of the Code of Civil Procedure. The *ex parte* enquiry under order XXI, rule 40, is seldom of any use. I believe whenever an application for arrest of a debtor is made, it is invariably supported by an affidavit sworn to by the creditor, or by somebody else on his behalf. If an *ex parte* enquiry be held only those facts now contained in the affidavit would be forthcoming. I cannot agree in thinking that persons are imprisoned at present, merely because they are judgment-debtors. I am not prepared to say that there are not Judges who sometimes fail to exercise their discretion, but to such people the *ex parte* enquiry under order XXI, rule 40, would, even if held, hardly be of any use.

In my humble opinion any restriction on imprisonment, except the existing wide discretion vested in the judicial officers who have to order arrests of judgment-debtors, would heavily handicap the petty merchant or artificer, as well as the ordinary cultivator (agriculturist) in getting loans. At present these persons are able to get loans only from these sharks and from no other source. If only all courts are empowered—in the same way in which the Small Cause Courts in the Presidency towns now are—to direct payments of decree-debts by way of instalments, even without the consent of the decree-holder, but after hearing him, and if courts are also empowered (by the passing of a Money Lenders Act) to interfere, within reasonable limits, with the rate of interest charged, then the present law and rules relating to imprisonment for debts may be retained as they are.

I think it is not correct to say that "it is found that" the rate of interest charged often bears little relation to the "quality of the security and is regulated rather by custom." In my experience I find it is altogether different—the same marwadi or sowcar, who charges 75 per cent. interest when he lends on a mere On Demand promissory note, charges only 37½ per cent. sometimes only 24 per cent. interest when he lends to the same debtor on the pledge of a jewel or other articles. Interest is regulated by custom only in the case of loans by the better class of merchants and commission agents.

The existing law of insolvency is by no means satisfactory. In the Presidency Town, it is notorious that only dishonest men succeed in getting their discharge. The system prevailing

in the High Court—before the Commissioner in insolvency—of permitting only the double, and the ruinously costly, agency of attorney and counsel to appear, and excluding the cheaper agency of a vakil from appearing, has the baneful effect of depriving the honest pauper of the benefit of the insolvency provisions because he is unable to engage an attorney and counsel. But a dishonest man goes through the insolvency court by paying an attorney and counsel, as easily as through the portals of a theatre by paying the gate money, and enjoys the discomfiture of a body of creditors, who find it difficult to pay the double agency of attorney and counsel, and are therefore unable to expose the fraud of the insolvent. In the Madras city some insolvents successfully went through the insolvency court more than once by lavish expenditure upon the best attorney and the most eminent counsel; and subsequently lived in opulence and comfort to the utter chagrin of many a creditor who had been ruined by them. If the fraudulent insolvent could be sent to gaol while the indigent debtor could be saved from prison it is a consummation devoutly to be wished for. But no amount of laws and rules alone can effect this.

If each judicial officer conscientiously attends to the matter of finding out who is the honest pauper, and who is the dishonest cheat, then very seldom would any hardship arise. But I don't mean to say that laws, and rules require no change. The charges and fees in insolvency proceedings are now beyond the means of most honest insolvents, especially so, in the Presidency town I fear. In the case of mufassal judges, disposal of suits and appeals count very much for statistical purposes, and I believe execution petitions, which do not so count, receive but scanty attention. In the Presidency Small Causes Court the judgment debtor being permitted to pay by easy instalments (even against the opposition of the creditor, and in most cases without his consent) is very often part and parcel of the disposal of the suit itself, and as these orders are often revised in the light of subsequent events and change of circumstances, both the creditor and the debtor have free recourse to such applications, on which they have not got to pay even as stamp duty. Therefore it is very seldom that a really indigent debtor is sent to gaol. If only applications for arrest of judgment debtors receive as much attention as they ought to, then the existing law as to imprisonment for debts may remain as it is at present.

As to the period of limitation prescribed by section 48, Civil Procedure Code, for execution of decrees, viz., twelve years, it should not, in my opinion, be reduced; but if it has to be, I agree to three years being fixed in the case of money decrees for Rs. 50 and under only.

## XXVIII

*Letter*—from F. B. LOVERY, Esq., Attorney-at-Law, Registrar of the Small Cause Court, Madras.

*Dated*—the 9th January 1915.

The questions which have proved the most difficult to deal with, and which more than any others have been the cause of fluctuating legislation, have undoubtedly been those relating to the conflicting interests of the debtors and the creditors under conditions more or less beyond the control of the civil court.

In primitive times the laws were directed to protect only the creditor, the debtor being treated as a criminal. The power of selling the debtor and his family to slavery was one which was habitually exercised in Greece, Rome and generally among the Nations of Antiquity. This savage severity of those earlier laws was, however, found to be inconsistent with the development of more human ideas and the growth of popular rights. Later legislation, however, consequently substituted imprisonment in a public prison for the right of selling the person of the judgment-debtor. As trade began to develop it was found necessary to provide some means of bringing personal pressure to bear upon the debtors for the purpose of compelling them to meet their obligations, and, under the practice of the English Courts of Law the right of a creditor to enforce his claims by the imprisonment of his debtors continued until recent times.

Without some system of enforcing payment of debts commerce would be seriously affected, for commerce is necessarily founded largely on credit, and credit cannot exist without the power of enforcing the fulfilment of financial contracts. On the other hand remedies against a debtor's person are inconsistent with the growth of opinion among civilized communities. Hence the necessity of some system which is just to creditors while not unduly harsh upon debtors, which discriminates between involuntary inability to meet obligations and wilful refusal or neglect. This is what the Indian Legislation has by its various enactments intended to effect.

The Civil Procedure Code empowers the court to enquire into the circumstances and conduct of the debtor in the presence of the creditor and after hearing the creditor's objections to release a debtor who is unable from poverty or any other sufficient cause to pay the amount of the decree. The decree-holder cannot reasonably complain against the order, for if the debtor is found to be really unable to pay the debt, there can be no object in imprisoning him. I am not aware that the provisions of the Civil Procedure Code on this subject, order XXI, rules 37 and 40 have as Mr. Curgenven remarks become a dead letter. They are certainly strictly observed in the Small Cause Court.

Mr. Curgenven's memorandum describes the advantages and disadvantages of restriction on imprisonment (total abolition I do not think is contemplated). The existing provisions of the law if strictly carried out are in my opinion sufficient to make money-lenders more careful and put a stop to indiscriminate money-lending.

I agree with the proposal to amend order XX, rule 11 (a), Civil Procedure Code, so as to bring it into conformity with the laws applicable to the Small Cause Court.

I also agree with the proposal to reduce the period of limitation to three years in case of money decrees up to Rs. 2,000.

### XXIX

*Letter*—from M.R.Ry Rao Bahadur C. KRISHNASWAMI RAO Avargal, B.A., B.L.,  
Third Judge, Court of Small Causes, Madras.

*Dated*—the 11th January 1915.

With reference to the memorandum on imprisonment for debt I have the honour to state that the rules now contained in the Code of Civil Procedure are sufficient to prevent indiscriminate arrest and imprisonment. Rules 22 and 37 of order XXI lay down that notice shall or may be issued in certain cases to judgment-debtors. Rule 40 of order XXI invests courts with power to release a judgment-debtor brought under arrest in certain cases and on certain conditions. The special officer appears to think that the provisions contained in the above rules are a dead letter. I regret I am unable to share this view. Notices are in practice issued under rules 22 and 37 of order XXI. No doubt the cases in which judgment-debtors are released under rule 40 of order XXI are very rare. I do not think it is suggested that courts should of their own motion hold an investigation under rule 40 without the judgment-debtor claiming the benefit of that rule; nor do I think that any preliminary investigation of an *ex-parte* character before the issue of an arrest warrant will lead to any results of practical importance. In cases in which the judgment-debtor does apply for relief under rule 40 an enquiry, though necessarily of a summary character, is held and orders are passed. If judgment-debtors do not seek the protection which rule 40 gives them in certain cases I do not see why courts should make out a case for them under the said rule, or start an investigation *suo motu*. If rule 40 is not more largely availed of by judgment-debtors than the special officer would seem to desire, the reason appears to be that judgment-debtors who are really in indigent circumstances avail themselves of the provisions of the Insolvency Act. And furthermore in such cases judgment-creditors allow the release of judgment-debtors by failure to pay subsistence batta or give them time for payment or enter into some arrangement to facilitate realisation of decree amount. There seems to be no reason to suppose that judgment-creditors would care to throw away good money after bad and pay for the maintenance of a man from whom they could not expect to realise anything.

2. Fraudulent concealment of property, fraudulent transfers of property and *benami* transactions are so common and so largely employed to defeat the claims of judgment-creditors that it would be unwise to restrict the remedies open to judgment-creditors, or to deprive them of what at present is regarded as a very effective means of realisation. I do not see what further restriction can be placed than what at present is provided for in the Code. I am not sure whether the special officer desires that imprisonment for debt should be abolished completely. But as he does not suggest it specifically I do not think it necessary to deal with it. A large number of transactions, especially of a petty nature, are carried on on personal credit but such personal credit would, I fear, be seriously affected if the sanction of imprisonment is either absolutely or virtually taken away.

3. As regards the law of insolvency, I am of opinion that the adjudication of an insolvent should be made after scrutiny and not without any enquiry into the conduct of the debtor as is at present done under the terms of sections 14 and 15 of Act III of 1907. In the mufassal I do not think that fees are so high as to act as a deterrent to prevent indigent persons from availing themselves of the provisions of the Insolvency Act. But if they are high in any particular case the lowering of the fee would be an effective remedy to save a genuine pauper from prison and to allow him to be adjudicated an insolvent.

4. My experience in the Presidency Small Causes Court, though for a short period, inclines me to the opinion that the power granted to the Presidency Small Causes Court under section 30 of Act XV of 1882 in the matter of directing payments by instalments after the passing of a decree without the consent of the decree-holder would, if extended to all courts, be a most welcome relief to judgment-debtors and would have the effect of avoiding hardship in many cases and of preventing unnecessary imprisonment.

5. As regards the reduction of the period of limitation for the execution of decrees, I would limit it to three years only in the case of small cause decrees of less than Rs. 50 in amount.

CONFIDENTIAL.

473  
P

Law 49-30-2

(10)

Dear Sir,

I am directed to forward herewith a copy of the report written in 1916 by Mr. Cargenven, now Mr. Justice Cargenven of the Madras High Court, on the law relating to imprisonment for debt under the Civil Procedure Code and to state that Government would be glad to have the opinion of the Chief Justice as to the desirability or otherwise of taking action in the matter on the lines suggested therein.

Yours sincerely,

Th. M.

To

H.M. Krishnaswami, Esq., B.A., B.L.,  
Registrar, High Court of Mysore  
Bangalore.

CONFIDENTIAL.

~~B.O. No. 654/30-31~~

No.D<sub>1</sub>.141/30-31



12-2713830  
p830  
BANGALORE,

Dated 22nd November 1930.  
25<sup>th</sup>

Law 69-30-3

Dear Sir,

I am directed to acknowledge the receipt of your D.O. No.473/P Confidential, dated the 1st November 1930, and to enclose herein the opinion of the Chief Justice as regards the - recommendations made by Mr. Curgenven in 1916.

The printed copy of Government Order No.2622 dated 9th November 1916 of the Government of Madras received with your letter is returned herewith.

Yours sincerely,

*H. M. Mahadevayya*

P. MAHADEVAYYA, Esq., B.A., B.L.,  
Legal Remembrancer and  
Secretary to Government,  
Law Department,  
BANGALORE.  
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Note

The report of Mr. Curgenven containing the recommendations suggested by him was sent to Government so far back as the 22nd of March 1915. The Government of Madras stated in their Order dated the 9th November 1916, that the report would be forwarded to the High Court for favour of an expression of its views on the suggestions made. It does not appear that the Judges of the High Court were inclined to accept the recommendations, as I find that no action had been taken on it for nearly fourteen years.

The provisions of the Civil Procedure Code relating to ~~arrest~~ and detention contained in Sections 55 to 59 and Order 21 Rules 37 to 40 remained unaltered until very recently. Order 21 Rule 39 Sub-rules 4 and 5 were modified in the year 1923. Rule 40 underwent frequent amendments until at last they were replaced by the present Sub-rules of Rule 40 on 18-2-1930.

Moreover, the Provincial Insolvency Act III of 1907, which was in force at the time Mr. Curgenven wrote his report, has since been repealed and - given place for the Provincial Insolvency Act of 1920. The many defects which were noticed in the previous Act of 1907 and which provoked criticisms from the local Governments and Judges, have been rectified in the Act of 1920. Consequently, the suggestions of Mr. Curgenven are somewhat obsolete.

A summary of his recommendations is printed on pages 38 and 39 of his report. I do not think it is necessary to do more than what the Madras High Court itself has done in the matter. For ready reference Sub-rules of Rule 40, substituted by the Madras High Court recently, are typed and appended hereto. It will be seen therefrom that in Sub-rule 1, (1) the words "that an insolvency petition has been presented by or against the judgment-debtor, or" are inserted after the words "it appears to the Court" and the words "that the judgment-debtor is unable", and (2) that the words "the burden of proving the inability to pay being on the judgment-debtor" after the word "thereof" and the words "the Court may". (This second addition as regards the burden of proof is a distinct departure from the suggestion made by Mr. Curgenven.

In Sub-rule 2, the word "may" is substituted by "shall".

Sub-rules 3 and 4 remain unaltered.

In Sub-rule 5, after the proviso a new paragraph is added, regarding the allowances payable to the officer of the Court during the intermediate custody of the person arrested. This, to a certain extent, adopts the suggestion of Mr. Curgenven.

Sub-rules 5a and 6 are new additions. Sub-rule 5a is not the outcome of the recommendation

made

made by Mr. Curgenvén. Sub-rule 6 is a corollary to the additions made in Rule 39, regarding costs of conveyance from the court house to the civil prison and back.

It may be noted that in regard to Rules 39 and 40 no other High Court in British India has thought it necessary to introduce any change in them. In my opinion the view of the Madras High Court, as expressed in the additions and alterations they have made, is the utmost limit to which we can go. It may be noted that Mr. Curgenvén's proposal to limit the maximum period of detention to six weeks has not been accepted by the Madras High Court.

  
24.11.30

ANNEXURE.  
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Sub-rules of Rule 40 C.P.C.

40. (1) When a judgment-debtor appears before the Court in obedience to a notice issued under Rule 37, or is brought before the Court after being -  
Proceedings on appearance of judgment-debtor in obedience to notice or after arrest. arrested in execution of a decree for the payment of money, and it appears to the Court that an insolvency petition has been presented by or against the judgment-debtor or that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the burden of proving the inability to pay being on the judgment-debtor, the Court may upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be.
- (2) Before making an order under Sub-rule (1), the Court shall take into consideration any allegation of the decree-holder touching any of the following matters, namely --
- (a) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account;
  - (b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree;
  - (c) any undue preference given by the judgment-debtor to any of his other creditors;
  - (d) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it;
  - (e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree.
- (3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, in its discretion,

order

order the judgment-debtor to be detained in civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court.

- (4) A judgment-debtor released under this rule may be re-arrested.
- (5) Where the Court does not make an order under sub-rule (1) it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison.

Provided that, in order to give the judgment-debtor an opportunity of satisfying the decree, the Court before making the order of committal may leave the judgment-debtor in the custody of an officer of the Court for<sup>a</sup> specified period not exceeding ten days, or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

When the Court sees fit to leave a judgment-debtor in the custody of an officer of the Court and the judgment-debtor does not pay the costs incidental to such intermediate custody, it shall be competent for the Court to require the decree-holder, on pain of his application for arrest being disallowed, to pay into Court such sum as the Judge deems sufficient to cover such costs including batta for process-server, subsistence of the judgment-debtor and cost of conveyance, if any; and sums disbursed by the decree-holder under this proviso shall be deemed to be costs in this suit.

- (5-A) During the temporary absence of the Judge who issued the warrant under Rule 37 or 38, the warrant of committal may be signed by any other Judge of the same Court or by any Judicial Officer superior in rank who has jurisdiction over the same locality, or where the arrest is made on a warrant issued by the District Judge, the warrant of committal may be signed by any Subordinate Judge or District Munsiff, empowered in writing by the District Judge in this behalf.
- (6) No judgment-debtor shall be committed to the civil prison or brought before the Court from the prison to which he has been committed pending the consideration of any of the matters mentioned in sub-rule (2) unless and until the decree-holder pays into Court such sum as the Judge may think sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort for the journey to and from the prison.

Sub-rule (5) of Rule 39 shall apply to such payments.

\* \* \* \* \*

SUBJECT.....

Diary No. of letter replied to.....

Section

File No.

Serial No.

No.

General and Revenue Secretariat

To

the

192

Date of issue.....

Signed by

List of enclosures.....

Examined by.....

Law  
69-70  
4  
p. 3419

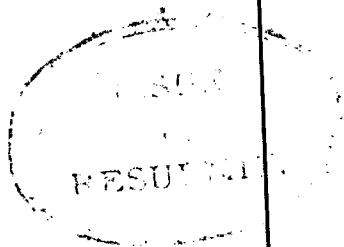
The Rep<sup>r</sup> H. Ct

15/12/30 Dear Sir,

Mr. P. Mahadevan

With reference to your letter no: D, 141/30-31 dated 25<sup>th</sup> Nov 1930, forwarding the opinion of the Chief Justice as regards the recommendation made by Mr. Carguven in 1916 relating to arrest & detention of judgment debtors under the Civil Procedure Code, I am directed to ~~State~~ <sup>State</sup> ~~request~~ that the High Court may be ~~pleased~~ <sup>pleased</sup> to take such action as they consider expedient in the matter

Yours for  
over



1st Apr that it is not necessary at present to copy what the matter is. Hope Court that the

19  
December 30

Dear Sir,

With reference to your letter No.D.141/30-31 dated 25th November 1930, forwarding the opinion of the Chief Justice as regards the recommendations made by Mr. Gurgenvin in 1916 relating to arrest and detention of judgment debtors under the Civil Procedure Code, I am <sup>desire</sup> ~~desire~~ to state that the Government agree that it is not necessary at present to go beyond what the Madras High Court has done and to suggest that the High Court may take such action as they consider expedient in the matter.

Yours sincerely,

To

H.M.Krishnaswami Esq., B.A.B.L.,

Registrar, High Court of Mysore.

SUBJECT.....

Diary No. of letter replied to.....

Section *Law*File No. *89-30*Serial No. *5*No. *73593*

General and Revenue Secretariat

( )

the

192

To

*Sir Charles Todd Hunter K.C.S.I.*

Date of issue.....

*27/12/30*

Dear Sir,

Signed by.....

*M. N. M. Rao*

With reference to your No. letter no: 21 dated 29<sup>th</sup> October 1930, to The Dewan regarding the imprisonment for debt under the Civil Procedure Code, I am directed to state that the law (viz <sup>in Madras</sup> order 21 rule 40 of the Code) is practically the same in Mysore as in Madras, excepting that after clause 5 of the said Rule, some additions have recently been made in Madras - After consulting the Chief  
over

List of enclosures.....

Copied by.....

Examined by.....

